SEVENTY-EIGHTH DAY
(Saturday, May 25, 1985)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

A quorum was announced present.

Senator John Leedom offered the invocation as follows:

Dear Heavenly Father, as we gather on this beautiful Saturday morning, at the end of the Session that has been a difficult one but a productive one, Your guidance for all of us is so deeply appreciated. Pray that we will understand as You said in the Lord's Prayer, "Give us this day our daily bread" and let us, as we prepare ourselves in these final votes, motions and movements, to bring those things forward for the great State of Texas and its people that will dearly be a blessing to them in years ahead. Let all of our work be to Thy Glory and Thy Honor in Christ's name. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 440** to adjust the differences between the two houses. House Conferees: Sutton, Chairman; Lee, Tejeda, Morales, Madla.

S.B. 1484, Relating to the dissolution of the Refugio County Memorial Hospital District.

S.B. 1356, Relating to the creation, administration, powers, duties, operation, and financing of the Montgomery County Municipal Utility District No. 69; and declaring an emergency.

S.B. 1357, Relating to the creation, administration, powers, duties, operation, and financing of the Montgomery County Municipal Utility District No. 70; and declaring an emergency.

S.B. 1358, Relating to the creation, administration, powers, duties, operation, and financing of the Montgomery County Municipal Utility District No. 71; and declaring an emergency.

S.B. 1359, Relating to the creation, administration, powers, duties, operation, and financing of the Montgomery County Municipal Utility District No. 72; and declaring an emergency.

S.B. 1360, Relating to the creation, administration, powers, duties, operation, and financing of the Montgomery County Municipal Utility District No. 73; and declaring an emergency.

S.B. 1361, Relating to the creation, administration, powers, duties, operation, and financing of the Montgomery County Municipal Utility District No. 74; and declaring an emergency.

S.B. 1458, Relating to the organization, boundaries, purposes, powers, duties, functions, authority, and financing of the Bastrop County Reclamation, Road, and Utility District, No. 1.

S.B. 513, Relating to the authority of a county to construct, improve, maintain, or repair city streets and alleys with the consent of the city. (As substituted)

S.B. 524, Relating to certain fees required for a pharmacist license.

S.B. 538, Relating to the calculation of the taxable value of property in a school district for purposes of public school finance. (Amended)

S.B. 651, Relating to the fees and penalties charged for the regulation and licensing of funeral directing, embalming, and funeral establishments by the State Board of Morticians.

S.B. 660, Relating to a statement of testimony of a child in certain proceedings under Title 3, Family Code. (As substituted)

S.B. 806, Relating to financial and billing procedures of hospitals. (Amended)

S.B. 823, Relating to closing public water to the taking of aquatic life for sale or for human consumption; providing a penalty.

S.B. 876, Relating to the provision of and eligibility for kidney health care services.

S.B. 903, Amending Chapter 656, Acts of the 68th Legislature, Regular Session 1983; authorizing interim and permanent financing by the issuance of various obligations by or on behalf of governmental agencies. (Amended)

S.B. 957, Relating to the licensing and regulation of home health agencies and to the handling of complaints; prescribing certain fees and their use; providing for civil penalties. (Amended)

S.B. 1186, Relating to fire fighter and police officer retirement systems in certain cities; validating certain prior acts and proceedings for separation of pension funds.

S.B. 1222, Relating to exclusion of premiums paid by a single nonprofit trust covering county employees from the definition of gross premiums for payment of gross premiums tax on life, health, and accident insurance.

S.B. 1225, Relating to the creation and establishment of a conservation and reclamation district under Article XVI, Section 59 of the Constitution of Texas known as Sunnyvale Municipal Utility District No. 1; providing....

S.B. 1257, Relating to the issuance and extent of warrants issued by certain authorities.

S.B. 1280, Relating to civil liabilities of the owner of a sign for trespasses on the premises of another; defining trespasses.

S.B. 1302, Relating to the liability of the operator of a boat or motor vehicle for litter offenses; providing a penalty; adding Section 2.08 to the Texas Litter Abatement Act (Article 4477-9a, VTCS).

S.B. 1303, Relating to civil and criminal penalties for commission of certain litter offenses.

S.B. 1304, Relating to the creation, administration, powers, duties, operations, financing, and organization of the Riviera Water Control and Improvement District. (Amended)

S.B. 1309, Relating to the compensation of certain judges in Tarrant County.

S.B. 1320, Amending Subdivision (10), Section 2, Development Corporation Act of 1979, as amended (Article 5190.6, Vernon's Texas Civil Statutes), relating to the definition of the term "project."

S.B. 1342, Relating to the Texas College Student Loan Bonds Interest and Sinking Fund. (Amended)

S.B. 1348, Relating to admonitions by the court to defendants who are noncitizens before acceptance of a plea of guilty or nolo contendere; amending Section (a), Article 26.13, Code of Criminal Procedure, 1965, as amended.

S.B. 1353, Relating to an unposted surcharge for use of a credit card. (Amended)

S.B. 1377, Relating to the name of the Coastal Industrial Water Authority to the "Coastal Water Authority"; conferring on the authority the rights, powers, privileges, authority, and functions conferred by Chapters 51 and 54, Water Code.

S.B. 1378, Relating to the classification and indexing of records in the custody of a county clerk, county recorder, or clerk of a county court.

S.B. 1420, Relating to compensation for directors of the San Patricio County Drainage District.

S.B. 1421, Relating to the acquisition by purchase of existing roads by a road district; adding Section 4.447 to the County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes).

S.B. 1426, Relating to the creation, organization, administration, and financing of road districts encompassing territory in two or more counties; amending Part 4, County Road and Bridge Act, as amended (Article 6702-1, VTCS).

S.B. 1455, Relating to notice in lawsuits in which certain present or former State employees are parties and to notice of intent to take default judgments against certain present or former State employees. (Amended)

S.B. 1487, Relating to the power of cities and towns having a population of not less than 70,000 or more than 90,000, located wholly or partially within a county with a population greater than one million, to annex a general law city or town having a population of less than 600. (Amended)

S.B. 419, Relating to application of the Texas Pharmacy Act to a pharmacy in an institution licensed under the Texas Mental Health Code.

H.B. 2488, Creating the El Paso County Lower Valley Water District Authority.

H.B. 1544, Relating to the punishment for the offense of murder if certain mitigating circumstances are proved and abolition of the separate offense of voluntary manslaughter.

H.B. 1555, Relating to the operation of an authorized emergency vehicle.

H.B. 1851, Relating to the circumstances under which a person may not stop, stand, or park a vehicle; providing a penalty.

H.C.R 207, Granting Fred Shin and Austin Traffic Signal Construction Company permission to sue the State.

H.B. 1929, Relating to the offense of posessing or using a substance containing a volatile chemical.

H.B. 2516, Relating to designating State Highway 288 as the Brazoria Highway.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT
SENATE BILL 440

Senator Traeger submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 440** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TRAEGER	SUTTON
SHARP	TEJEDA
KRIER	MADLA
SIMS	LEE
KOTHMANN	MORALES
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the governance, territory, and powers of a metropolitan rapid transit authority and to the authority of certain cities to vote for annexation; amending Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), by amending Subsections (l) and (q), Section 6; Subsection (b), Section 6A; Subsections (c) and (e), Section 6B; and Subsection (a), Section 14.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (l) and (q), Section 6, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), are amended to read as follows:

"(l) The authority may make contracts, leases and agreements with, and accept grants and loans from, the United States of America, its departments and

agencies, the State of Texas, its agencies, counties, municipalities and political subdivisions, [~~and~~] public or private corporations, including a nonprofit corporation created under a resolution of the board, and other persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid."

"(q) The authority may contract with any city, county, or other political subdivision or any person, firm, or corporation, including a nonprofit corporation, for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties. Nothing in Subsection (i), (l), or (q) of Section 6 pertaining to powers of the authority shall operate to create or confer any governmental immunity or limitation of liability on any entity or person other than the authority."

SECTION 2. Subsection (b), Section 6A, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) The governing body of any incorporated city or town located in whole or in part within either a county in which any portion of the authority territory is situated or a county adjacent to a county in which any portion of the authority territory is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the board of the authority, and the city or town shall become a part of the authority, except as provided in Subsection (f) of this section."

SECTION 3. Subsections (c) and (e), Section 6B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), are amended to read as follows:

"(c) If 75 percent or more of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board consists of 11 members, including the original five members or their successors, two additional members appointed jointly by the mayors of all incorporated municipalities except the principal city located within the authority, three other additional members appointed by the commissioners court of the county, and one member, who serves as chairman, who is appointed by a majority of the board. If a member of the board is appointed under this subsection to serve as chairman, the member is considered to have vacated the member's other position on the board, and a successor shall be appointed as provided by Subsection (f) of this section. A person appointed under this subsection may serve two consecutive terms as chairman, in addition to any service the person served on the board before the person's appointment as chairman [~~the other ten members~~]."

"(e) The terms of office of any members of the board appointed after the confirmation and tax election and after the effective date of this Act are four years, except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the effective date of this Act, if an even number is to be appointed by an agency, and a bare majority of the first members appointed by the agency, if an odd number greater than one is to be appointed by an agency, are two years. In addition, the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person

must be a qualified voter residing within the boundaries of the authority. Except as provided by Subsection (c) of this section, a person [~~No member of the board~~] may not serve more than two consecutive four-year terms as a member of the board."

SECTION 4. Subsection (a), Section 14, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) Contracts for more than $10,000 [~~$5,000~~] for the construction of improvements or the purchase of material, machinery, equipment supplies and all other property except real property, shall be let on competitive bids after notice published once a week for two consecutive weeks, the first publication to be at least 15 days before the date fixed for receiving bids, in a newspaper of general circulation in the area in which the authority is located. The board may adopt rules governing the taking of bids and the awarding of such contracts and providing for the waiver of this requirement in the event of emergency, in the event the needed materials are available from only one source, in the event that, except for construction of improvements on real property, in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement, and in the event that, except for construction of improvements on real property, after solicitation it is ascertained that there will be only one bidder. This subsection does not apply to personal and professional services or to the acquisition of existing transit systems."

SECTION 5. The change made by this Act in Subsection (a), Section 14, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), applies to contracts made on or after the effective date of this Act. A contract made before that date is subject to the law in effect when the contract was made, and the former law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 2461

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2461** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN	WILLY
SHARP	J. HARRIS
WILLIAMS	S. JOHNSON
SIMS	GARY THOMPSON
KOTHMANN	KUEMPEL
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

REPORTS OF STANDING COMMITTEES

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

H.B. 2122
H.B. 2499
H.B. 2479
H.B. 993
H.B. 2514
H.B. 2513
H.B. 2512
H.B. 2511
H.B. 2522
H.B. 2490
H.B. 2487
H.B. 2486
H.B. 2469
H.B. 2463
H.B. 1959
S.B. 1448
H.B. 245
H.B. 1346

Senator Mauzy submitted the following report for the Committee on Jurisprudence:

H.B. 1193
H.B. 2034 (Amended)
H.B. 2220
H.C.R. 137
H.C.R. 198
H.C.R. 211
H.C.R. 226
H.C.R. 227
H.C.R. 228
H.C.R. 229
H.C.R. 235
H.C.R. 237
H.C.R. 219
H.C.R. 131
H.C.R. 241
H.C.R. 239
C.S.H.B. 17
H.B. 655

H.B. 2481
H.B. 1037
H.B. 788 (Amended)
C.S.H.B. 2423
C.S.H.B. 58
H.B. 256
H.B. 987
H.B. 1351
H.B. 1391
H.B. 280

Senator Parker submitted the following report for the Committee on Education:

H.B. 2036

SENATE RESOLUTION ON FIRST READING

On motion of Senator Harris and by unanimous consent, the following resolution was introduced, read first time and referred to the Committee indicated:

S.R. 521 by Harris — Administration
Directing Senate Economic Development Committee to undertake interim study of banking matters.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.C.R. 191, To Committee on Jurisprudence.
H.C.R. 192, To Committee on Jurisprudence.
H.C.R. 194, To Committee on Jurisprudence.
H.C.R. 204, To Committee on Jurisprudence.
H.C.R. 205, To Committee on Jurisprudence.
H.C.R. 206, To Committee on Jurisprudence.
H.C.R. 212, To Committee on Jurisprudence.
H.C.R. 213, To Committee on Jurisprudence.
H.C.R. 253, To Committee on Administration.
H.J.R. 37, To Committee on Finance.
H.B. 2502, To Committee on Natural Resources.
H.B. 2520, To Committee on State Affairs.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

May 24, 1985

Pursuant to Article IV, Section 14 of the Constitution of Texas, I hereby veto Senate Bill 737 because of the following objections:

This bill seeks to exempt from ad valorem taxation certain property when that property is owned, wholly or in part, by a public entity. The effect of this bill would be to completely exempt from these taxes leaseholders of most of the major sports coliseums in this state. Thus, such businesses could avoid paying their fair share of these taxes.

I believe that leaseholders of such properties should pay their fair share toward financing the governmental activities in their area, especially when they operate these facilities on a for profit basis and receive benefits from the taxing entities involved.

Therefore, I veto **S.B. 737.**

Respectfully,

/s/Mark White
Governor of Texas

SENATE BILL 1002 WITH HOUSE AMENDMENTS

Senator Harris called **S.B. 1002** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Wallace

Substitute the following for **S.B. 1002**:

A BILL TO BE ENTITLED

AN ACT

relating to the powers, duties, and funding of certain state agencies and local governmental entities that perform functions related to the commemoration of the Texas sesquicentennial.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 84, Acts of the 66th Legislature, 1979 (Article 6145-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.(e) An ex-officio member or a member appointed by the speaker of the house of representatives or by the lieutenant governor may designate a representative to serve in the member's absence. A designated representative must be an officer or employee of the member's agency or organization. The designated representative has all the powers and duties of the ex-officio or legislative member.

SECTION 2. Chapter 84, Acts of the 66th Legislature, 1979 (Article 6145-11, Vernon's Texas Civil Statutes is amended by adding Section 4(d) to read as follows:

Sec. 4.(d) There shall be created from the membership of the commission an executive committee composed of seven members: the chairman of the commission; two members designated by the speaker of the house of representatives from the speaker's appointees; two members designated by the lieutenant governor from the lieutenant governor's appointees; the executive head of the Texas Tourist Development Agency; and the executive head of the Texas Commission on the Arts. The executive committee shall have full authority to act on behalf of the commission for all purposes when the commission shall not be meeting, and shall have oversight and authority over all the activities of the commission and its employees in the full commission's absence.

SECTION 3. Chapter 84, Acts of the 66th Legislature, 1979 (Article 6145-11, Vernon's Texas Civil Statutes), is amended by amending Section 7 and adding Section 7A to read as follows:

Sec. 7. DUTIES. The commission shall:

(1) encourage individuals, private organizations, and local governmental bodies to organize activities celebrating the state's sesquicentennial;

(2) help individuals, private organizations, and local governmental bodies that organize sesquicentennial activities to coordinate the activities;

(3) gather and disseminate information to the general public about sesquicentennial activities conducted in the state;

(4) develop standards for sesquicentennial activities organized by individuals, private organizations, and local governmental bodies and sanction activities that comply with the standards;

(5) invite national and international dignitaries to attend sesquicentennial activities conducted in the state;

(6) encourage persons living outside the state to attend sesquicentennial activities conducted in the state;

(7) develop and use an official state sesquicentennial [a] logo [~~to be used by the commission and permit other persons to use the logo if the commission considers the use appropriate~~]; and

(8) adopt rules to:

(A) sanction official sponsors and official commemorative or promotional products; and

(B) exclusively license the use of the official state sesquicentennial logo by official sponsors including business and corporate sponsors, and producers of official commemorative or promotional products, in exchange for either a fee or royalties or both [~~sanction and may sell products, such as a commemorative calendar or flag, commemorating the state's sesquicentennial~~].

Sec. 7A. PROHIBITION. (a) An individual, company, association, or corporation that is not sanctioned or licensed by the commission may not use the official sesquicentennial logo in whole or in part, represent itself as a sponsor of the sesquicentennial, market a product as a commemorative or promotional product of the sesquicentennial or further violate any other provision of this Act.

(b) No sanctioned individual, private organization, local sesquicentennial committee, or governmental body may grant or license any sesquicentennial sponsorship or use the official state sesquicentennial logo in whole or in part without the express approval of the Texas 1986 Sesquicentennial Commission.

(c) The attorney general on behalf of the commission may bring an action for injunctive relief to prevent a violation of this section from continuing or occurring and for damages resulting from a violation of this section.

SECTION 4. Section 1, Chapter 548, Acts of the 67th Legislature, Regular Session, 1981 (Article 6145-11a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. COUNTY SESQUICENTENNIAL COMMITTEES [~~COMMEMORATIVE MEDALS~~]. (a) The commissioners court of a county may appoint a committee to organize activities celebrating the state's sesquicentennial.

(b) The commissioners court may appropriate funds from the general fund of the county that the committee may use to perform its functions.

(c) The committee may accept donations, on behalf of the county, and use the donations to perform its functions.

(d) The committee shall make quarterly reports of its activities to the commissioners court.

(e) This Act expires on September 1, 1987 [~~The state treasurer may coin gold alloy medals commemorating the Texas sesquicentennial in one, one-half, one-fourth, and one-tenth of an ounce weights.~~

[~~(b) The state treasurer shall sell any commemorative medals coined under this Act to the public at prices that are calculated to recover at least the costs of making and selling the medals.~~

[~~(c) Sales of commemorative medals under this Act are exempt from state and local sales tax.~~

[~~(d) If the state treasurer determines to coin commemorative medals under this Act, the Texas 1986 Sesquicentennial Commission shall conduct a contest to determine the design of the medals.~~

[~~(e) In no event shall the sale issuance price of coined commemorative medals under this Act be less than the cost of production plus the cost of the gold and the intrinsic value~~].

SECTION 5. Title 106, Revised Statutes, is amended by adding Article 6145-11b to read as follows:

Art. 6145-11b. SESQUICENTENNIAL FUND

Sec. 1. Amounts received from the following sources shall be deposited in a special fund in the state treasury to be known as the sesquicentennial fund and are appropriated for the purposes contained herein:

(1) licensing fees and royalties authorized by Section 7(8)(B), Chapter 84, Acts of the 66th Legislature, 1979 (Article 6145-11, Vernon's Texas Civil Statutes); and

(2) proceeds from the sale of medallions designated by the Texas 1986 Sesquicentennial Commission as lone stars under Article 6145-14a, Revised Statutes.

Sec. 2. After the expiration of Chapter 84, Acts of the 66th Legislature, 1979 (Article 6145-11, Vernon's Texas Civil Statutes), the comptroller of public accounts shall collect proceeds from royalties due under licenses granted by the Texas 1986 Sesquicentennial Commission.

Sec. 3. As amounts from licensing fees, royalties, and the sale of medallions designated as lone stars by the Texas 1986 Sesquicentennial Commission are deposited in the fund:

(1) the state treasurer shall allocate the amounts equally between an account in the fund that may be used only by the Texas Tourist Development Agency and an account in the fund that may be used only by the Texas Commission on the Arts, until the account of the Texas Commission on the Arts has received $1,261,244; and

(2) after the account for the Texas Commission on the Arts has received $1,261,244, the state treasurer shall allocate the amounts only to the account of the Texas Tourist Development Agency until that account has received $2,291,996; and

(3) after the account for the Texas Tourist Development Agency has received $2,291,996, the state treasurer shall allocate the amounts equally among the account of the Texas Tourist Development Agency, the account of the Texas Commission on the Arts, and an account in the fund that may be used only by the Texas 1986 Sesquicentennial Commission, until the account of the Texas Commission on the Arts has received a total of $7,095,846 from amounts allocated under this subdivision and Subdivision (1) of this section;

(4) after the account for the Texas Commission on the Arts has received a total of $7,095,846 from amounts allocated under Subdivisions (1) and (3) of this section, the state treasurer shall allocate the amounts equally between the accounts of the Texas Tourist Development Agency and the Texas 1986 Sesquicentennial Commission until the account of the Texas 1986 Sesquicentennial Commission has received a total of $10 million from amounts allocated under this subdivision and Subdivision (3) of this section or until January 31, 1987, whichever shall first occur;

(5) after the Texas 1986 Sesquicentennial Commission has received a total of $10 million from the amounts allocated under Subdivisions (3) and (4) of this section, the state treasurer shall allocate the amounts only to the account of the Texas Tourist Development Agency until the account of the Texas Tourist Development Agency has received a total of $15,145,604; and

(6) after the Texas Tourist Development Agency has received a total of $15,145,604 from amounts allocated under this section, the state treasurer shall allocate the amounts only to the account of the State Preservation Board.

Sec. 4. (a) Money in the fund allocated to the Texas Tourist Development Agency under Sections 3(1) and (2) of this article shall be used to publish an official tour guide of the sesquicentennial or for promotional activities for the Texas 1986 Sesquicentennial Commission.

(b) Money in the fund allocated to the Texas Tourist Development Agency under Sections 3(3), (4), and (5) of this article shall be used to advertise and promote the sesquicentennial both in and out of the state and for other activities as provided by law.

(c) Money in the fund allocated to the Texas Commission on the Arts under Section 3 of this article shall be used for funding and supporting sesquicentennial projects and programs and to perform any of the functions of the commission.

(d) Not less than one-half of the money in the fund allocated to the Texas 1986 Sesquicentennial Commission shall be distributed to local official sesquicentennial committees sanctioned by the commission according to procedures adopted by the commission.

(e) Money in the fund allocated to the Texas 1986 Sesquicentennial Commission that is not distributed to local official sesquicentennial committees under Subsection (d) of this section shall be used to advertise and promote the sesquicentennial both in and out of state through interagency contracts with the Texas Tourist Development Agency.

SECTION 6. Title 106, Revised Statutes, is amended by adding Article 6145-14a to read as follows:

Art. 6145-14a. LONE STAR MEDALLIONS. (a) The Texas 1986 Sesquicentennial Commission shall designate a one ounce silver lone star medallion and one, one-half, one-fourth, and one-tenth ounce gold lone star medallions as official commemorative medallions of the sesquicentennial.

(b) The board shall contract for the production, marketing, and distribution of the medallions.

(c) The board shall deposit the proceeds from the sale of medallions to the credit of the sesquicentennial fund.

SECTION 7. Subchapter H, Chapter 1512, Tax Code, is amended by adding Section 151.334 to read as follows:

Sec. 151.334. LONE STAR MEDALLIONS. Medallions designated as lone stars by the Texas 1986 Sesquicentennial Commission under Article 6145-14a, Revised Statutes, are exempted from the taxes imposed by this chapter.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Wallace

Amend **C.S.S.B. 1002** as follows:

(1) On page 8, line 2, between "section" and "shall" insert "or used to reimburse the comptroller of public accounts for audit services provided under Section 5 of this article".

(2) On page 8, between lines 4 and 5, insert the following:

Sec. 5. The Texas 1986 Sesquicentennial Commission may audit any official sesquicentennial licensee or product manufacturer. At the request of the commission, the comptroller of public accounts shall perform the audit. The comptroller of public accounts shall be reimbursed for services provided under this section from money provided for that purpose under Section 4(e) of this article.

Floor Amendment No. 2 - Wallace

Amend **C.S.S.B. 1002**, line 1, page 3 by adding:

and register such logo in state and federal offices as a service mark or trademark and secure copyright on such logo and any other printed, visual, graphic, audio, or audiovisual materials developed hereunder;

Floor Amendment No. 3 - Wallace

Amend **C.S.S.B. 1002**, Sec. 7A. PROHIBITION by deleting item (c) and substituting the following:

(c) The attorney general on behalf of the commission, or a private lawyer approved by the attorney general, is authorized to institute civil action against any violation of this Art. 6145-11 and in addition to securing an injunction to prevent further violations may also recover actual damages for any violation and at the discretion of the court may recover statutory damages up to $5,000 per violation and attorney fees are obtainable.

Floor Amendment No. 4 - Wallace

Amend **C.S.S.B. 1002** as follows:

(1) On page 1, line 20, strike "seven" and substitute "nine".

(2) On page 1, line 21, between the semicolon and "two" insert "two members designated by the governor from the governor's appointees;".

(3) On page 2, line 2, strike "The executive committee shall have full authority to" and substitute "Subject to disapproval by the commission, the executive committee may".

Floor Amendment No. 5 - Wallace

Amend **C.S.S.B. 1002** by adding a new Section 9 to read as follows and renumbering all subsequent sections appropriately:

SECTION 9. EFFECT OF PARTIAL INVALIDITY. (a) The legislature declares that it would not have enacted this Act without the inclusion of Sections 1 and 2 of this Act to the extent those sections provide for broad representation on the commission and for executive committee management of commission affairs between commission meetings. If the appointments provided by this Act are for any reason held invalid by a final judgment of a court of competent jurisdiction, the remainder of this Act and Chapter 84, Acts of the 66th Legislature, 1979 (Article 6145-11, Vernon's Texas Civil Statutes) are void.

(b) Except as provided by Subsection (a) of this section, this Act is severable as provided by Chapter 45, Acts of the 63rd Legislature, Regular Session, 1973 (Article 11a, Vernon's Texas Civil Statutes).

Floor Amendment No. 6 - Wallace

Amend **C.S.S.B. 1002** by adding the following new Section 6 and renumbering existing Section 6 and subsequent sections accordingly:

SECTION 6. (a) In addition to sums previously appropriated by the current general appropriations act, fifty percent of the receipts to the general revenue fund in excess of those amounts stated in the biennial revenue estimate of the Comptroller of Public Accounts for the hotel and motel tax (Fund 001, Revenue Code 3139), published in January 1985 as $70,751,000 in Fiscal Year 1986 and $76,057,000 in Fiscal Year 1987, shall be appropriated to the Texas Tourist Development Agency for media advertising and other marketing activities to encourage persons living outside Texas to attend Sesquicentennial activites conducted in the state. Total supplemental appropriations provided by this act shall not exceed $5 million for the 1986-87 biennium.

(b) No later than September 15, 1985, the Comptroller of Public Accounts shall prepare a forecast of hotel and motel tax revenue for each three-month period of the 1986-87 biennium. The total of such forecasts shall not exceed the January 1985 revenue estimates for hotel and motel tax revenue of $70,751,000 in Fiscal Year 1986 and $76,057,000 in Fiscal Year 1987.

(c) If the revenue derived from hotel and motel taxes during any three-month period of the biennium is greater than the amount forecast by the Comptroller of Public Accounts for the three-month period, under the provisions of Section 2 of this Act, a sum equal to the difference between the forecast and actual receipts is

appropriated from the general revenue fund to the Texas Tourist Development Agency for the biennium ending August 31, 1987, as of the fifth day of the month following the end of the period.

(d) This section expires December 31, 1986.

The amendments were read.

Senator Harris moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1002** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chairman; Blake, Henderson, Howard and Leedom.

HOUSE BILL 1191 ON THIRD READING

Senator Truan moved to suspend the regular order of business to take up for third reading and final passage:

H.B. 1191, Relating to credit in the Employees Retirement System of Texas for certain service performed by persons who became highway department employees.

The motion prevailed by the following vote: Yeas 18, Nays 8.

Yeas: Barrientos, Blake, Brooks, Edwards, Glasgow, Harris, Henderson, Kothmann, Leedom, McFarland, Mauzy, Parker, Sarpalius, Sharp, Sims, Truan, Uribe, Whitmire,

Nays: Brown, Caperton, Farabee, Jones, Krier, Lyon, Montford, Traeger.

Absent: Howard, Parmer, Santiesteban, Washington, Williams.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Lyon, Montford, Traeger and Whitmire asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 553 ON SECOND READING

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 553, Relating to certain industrial training programs conducted by the Central Education Agency.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend **H.B. 553** by inserting the following new section, appropriately numbered, immediately before the effective date section and by renumbering the effective date section and subsequent sections accordingly:

SECTION _____. TECHNOLOGY TRAINING. Title 83, Revised Statutes, is amended by adding Article 5190.4 to read as follows:

Art. 5190.4. TECHNOLOGY TRAINING

Sec. 1. TECHNOLOGY TRAINING BOARD. (a) The Technology Training Board is created. The board is composed of eight members selected by their respective organizations as follows:

(1) three members of the Texas Economic Development Commission;

(2) two members of the State Job Training Coordinating Council established under Section 8(b), Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes);

(3) one member of the board of regents of the Texas State Technical Institute;

(4) one member of the Coordinating Board, Texas College and University System; and

(5) one member of the State Board of Education.

(b) Members of the board serve two-year terms expiring February 1 of each odd-numbered year. The board shall elect a chairman and vice-chairman at its first meeting after each biennial appointment of members. Vacancies on the board shall be filled by the appropriate appointing organization for the unexpired term.

(c) The executive director and staff of the Texas Economic Development Commission shall serve as the executive director and staff of the board.

(d) The Technology Training Board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished September 1, 1987.

Sec. 2. DUTIES. The board shall:

(1) collect and disseminate information related to technology training, technology research, and job and industrial opportunities in the state;

(2) cooperate with the federal government, other state agencies, private businesses, and educational organizations in encouraging technology training and its implementation;

(3) conduct studies and issue reports relating to technology training; and

(4) take other action that it considers necessary to carry out the purposes of this article.

Sec. 3. BUSINESS ASSISTANCE PROGRAM. (a) The board shall develop a program of direct assistance to individual businesses seeking to aid or take advantage of technology training in the state. Under this program the board shall:

(1) refer businesses seeking to hire individuals trained by technology training organizations or businesses seeking aid in the technological training of their employees to the appropriate technology training organization;

(2) direct aid provided by businesses to appropriate technology training organizations; and

(3) provide other appropriate aid.

(b) The board shall collect a fee for services provided under this section. The board shall set the fee in the amount necessary to cover the cost of administering this article.

Sec. 4. ASSISTANCE TO TECHNOLOGY TRAINING ORGANIZATIONS. The board shall provide assistance to technology training organizations, including assistance in curriculum development, research direction, job placement, or other appropriate assistance.

Sec. 5. INITIAL APPOINTMENTS. The organizations represented on the board shall make their initial appointments to the board not later than the 90th day after the effective date of this article. The chairman of the Texas Economic Development Commission shall call an organizational meeting of the board not later than the 120th day after the effective date of this article. This section expires September 1, 1986.

The amendment was read and was adopted.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 553 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 553** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Santiesteban, Washington.

The bill was read third time and was passed.

COMMITTEE SUBSTITUTE HOUSE BILL 162 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 162, Relating to the summary suspension of certain alcoholic beverage permits or licenses pending investigation of violent acts taking place on the licensed premises.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 162 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 162** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Santiesteban, Washington.

The bill was read third time and was passed.

LEAVE OF ABSENCE

Senator McFarland was granted leave of absence for today on account of important business on motion of Senator Sims.

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 72 ON SECOND READING

Senator Jones asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.J.R. 72, Proposing a constitutional amendment to require approval by the Legislative Budget Board and the office of the governor of certain state agencies' use of appropriated funds for private consulting services and professional services, and authorizing the legislature to require the prior approval of the expenditure or emergency transfer of other appropriated funds.

There was objection.

Senator Jones then moved to suspend the regular order of business and take up **C.S.H.J.R. 72** for consideration at this time.

The motion was lost by the following vote: Yeas 16, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Blake, Brooks, Caperton, Farabee, Glasgow, Jones, Krier, Leedom, Montford, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Whitmire.

Nays: Barrientos, Brown, Edwards, Harris, Henderson, Howard, Kothmann, Lyon, Mauzy, Parker, Truan, Williams.

Absent: Parmer, Washington.

Absent-excused: McFarland.

HOUSE BILL 1911 ON SECOND READING

Senator Montford moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1911, Relating to the authority of the Board of Regents of The University of Texas System to select and acquire a site for a Super-conducting Super Collider Accelerator project.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: McFarland.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1911** by striking SEC. 65.33(c) as added by Section 1 of the bill and inserting the following;

(c) In the event that the federal government awards the Super-conducting Super Collider Accelerator project to one or more institutions of higher education in the State of Texas, one of which is a component of The University of Texas System, and the governor with the advice of the Houston Area Research Center Board determines that the board should select the site for the construction of this project on Permanent University Fund lands, the board shall use its best efforts to find a suitable site on Permanent University Fund lands. If the board determines that it is not feasible to locate the project wholly on Permanent University Fund lands and the legislature has appropriated funds for such purpose, the board may exercise the power of eminent domain to acquire, on behalf of the state, title and right of way easements in such land in addition to Permanent University Fund lands as the board may determine is necessary and appropriate for the project.

The committee amendment was read and was adopted.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1911**, SECTION 1. Section 65.33, Education Code, Subsection (c) to read as follows:

(c) In the event that the federal government awards the Super-conducting Super Collider Accelerator project to one or more institutions of higher education in the State of Texas, one of which is a component of The University of Texas System and/or The Texas A&M University System, and the governor with the advice of the Houston Area Research Center Board determines that The Board of Regents of The University of Texas System ~~board~~ should select the site for the construction of this project on Permanent University Fund lands, the board shall use its best efforts to find a suitable site on Permanent University Fund lands. If the board determines that it is not feasible to locate the project wholly on Permanent University Fund lands and the legislature has appropriated funds for such purpose, the board may exercise the power of eminent domain to acquire, on behalf of the state, title and right of way easements in such land in addition to Permanent University Fund lands as the board may determine is necessary and appropriate for the project. If a component of both The University of Texas System and The Texas A&M University System are members of the consortium that is awarded the

Super-conducting Super Collider Accelerator project, The Board of Regents of The University of Texas System shall not proceed to select a site and to exercise the power of eminent domain without a resolution of concurrence from The Board of Regents of The Texas A&M University System.

The amendment was read and was adopted.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1911 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1911** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: McFarland.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

SENATOR ANNOUNCED PRESENT

Senator McFarland who had previously been recorded as "Absent-excused" was announced "Present".

HOUSE BILL 1485 ON SECOND READING

Senator Blake moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1485, Relating to certain legislative records, communications, information, advice, and opinions.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Williams.

Nays: Barrientos, Edwards, Mauzy, Parmer, Truan, Uribe, Washington, Whitmire.

The bill was read second time.

Senator Blake offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1485** on page 9, line 16, by striking "6" and substituting "7".

The committee amendment was read and was adopted.

Senator Parmer offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1485**.

Delete SECTION 1, Sec. 8. (i).
(page 3, line 22).

The amendment was read and was adopted.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1485**.

Delete SECTION 2.
(page 4, line 3)

The amendment was read and was adopted.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 1485**.

Delete SECTION 7.
(page 8, line 12)

The amendment was read and was adopted.

Senator Uribe offered the following amendment to the bill:

Floor Amendment No. 4

Amend **H.B. 1485** in SECTION 6 by striking Section 2 of Article 5429b-3.

The amendment was read.

On motion of Senator Blake, the amendment was tabled by the following vote: Yeas 22, Nays 9.

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Williams.

Nays: Barrientos, Caperton, Edwards, Lyon, Mauzy, Truan, Uribe, Washington, Whitmire.

Senator Uribe offered the following amendment to the bill:

Floor Amendment No. 5

Amend **H.B. 1485** in SECTION 6 by striking Section 2 of Article 5429b-3 and by substituting in lieu thereof the following:

Sec. 2. RECORDS. (a) To ensure the right of citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the identity of citizens communicating with a member of the legislature or the lieutenant governor, the public disclosure of the identity of a citizen of this state who communicates with a member or the lieutenant governor in his official capacity is prohibited unless:

(1) the citizen expressly or by clear implication authorizes the disclosure;

(2) the communication is of a type that is expressly authorized by statute to be disclosed; or

(3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.

The amendment was read.

On motion of Senator Blake, the amendment was tabled by the following vote: Yeas 20, Nays 11.

Yeas: Blake, Brooks, Brown, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Williams.

Nays: Barrientos, Caperton, Edwards, Farabee, Lyon, Mauzy, Parmer, Truan, Uribe, Washington, Whitmire.

On motion of Senator Blake and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTES

Senators Mauzy and Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1485 ON THIRD READING

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1485** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Whitmire, Williams.

Nays: Edwards, Lyon, Mauzy, Parmer, Uribe, Washington.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 9.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Williams.

Nays: Barrientos, Edwards, Lyon, Mauzy, Parmer, Truan, Uribe, Washington, Whitmire.

(Senator Brooks in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1283, Relating to the establishment and operation of local crime stoppers programs and payments to those programs and to law enforcement agencies by probationers.

S.C.R. 168, Granting the Texas 4-H permission to use the chambers of the Senate and the Texas House of Representatives in the State Capitol on July 16 and 17, 1985. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTION 483 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.R. 483, Establishing delegation appointed by Lieutenant Governor to protest in Washington the proposed withholding and diversion of funds authorized for and allocated to States for water sports purposes.

The resolution was read second time and was adopted.

HOUSE BILL 1252 ON THIRD READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

H.B. 1252, Relating to the authorization of investments in certain development bank securities by certain private and governmental investors.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1856 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1856, Relating to the use of money in the public transportation fund by certain organizations for rural public transportation.

The bill was read second time and was passed to third reading.

HOUSE BILL 1856 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1856** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 713**. House Conferees: Rudd, Chairman; Denton, Uher, Haley, Saunders.

The House refused to concur in Senate amendments to **H.B. 402** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Criss, Jones, Sam Johnson, Lewis, Jackson.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 743 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 743, Relating to benefits payable on the death of a member or retiree of the Teacher Retirement System of Texas.

The bill was read second time.

Senator Edwards offered the following committee amendment to the bill:

Amend **H.B. 743** on page 1, line 11, by striking "$3,000" and substituting "$2,500".

The amendment was read and was adopted.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 743 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 743** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

HOUSE BILL 2174 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2174, Relating to reports to the secretary of state of certain precinct election results.

The bill was read second time and was passed to third reading.

HOUSE BILL 2174 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2174** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 226 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 226, Relating to the state's liability for and defense of certain claims against certain public servants.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **H.B. 226** by inserting the following after the last sentence of Section 4:

provided that the State shall not indemnify any person under this section who is criminally prosecuted for driving while intoxicated or driving under the influence of a controlled substance.

The amendment was read and was adopted.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 226 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 226** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

HOUSE BILL 1120 ON SECOND READING

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1120, Relating to the qualifications for loans made pursuant to the Texas Opportunity Plan; amending Section 52.32, Education Code.

The bill was read second time and was passed to third reading.

HOUSE BILL 1120 ON THIRD READING

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1120** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1973 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1973, Relating to the lease of certain state-owned land by the Texas Board of Mental Health and Mental Retardation for use by the Austin Child Guidance Center.

The bill was read second time and was passed to third reading.

HOUSE BILL 1973 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1973** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 18 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 18, Relating to the application of the Professional Prosecutors Act to certain prosecuting attorneys and to the compensation of the county attorney of Robertson County.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **C.S.H.B. 18** by striking all of the present language of **C.S.H.B. 18** after the enactment clause and substituting the following:

SECTION 1. Section 2, Professional Prosecutors Act (Article 332b-4, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITION. In this Act, "district attorney" means each of the district attorneys for the 2nd, 3rd, 9th, 12th, 18th, 21st, 26th, 27th, 29th, 30th, 31st, 32nd, 34th, 36th, 38th, [~~39th,~~] 43rd, 47th, 51st, 52nd, 63rd, 64th, 66th, 69th, 70th, [~~75th,~~] 76th, 81st, 85th, 90th, 97th, 105th, 106th, 110th, 118th, 119th, 145th, 155th, 159th, 173rd, 196th, 198th, 216th, [~~220th,~~] 229th, 235th, 253rd, [~~266th,~~] 271st, 349th, and 355th Judicial Districts; the criminal district attorney in each of the counties of Anderson, Bastrop, [~~Bee,~~] Bexar, Brazoria, Caldwell, Cass, Collin, Deaf Smith, Eastland, Fort Bend, Galveston, Gregg, Harrison, Hays, Hidalgo, Jackson, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Navarro, Orange, Randall, Rockwall, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, and Wood; the county attorney performing the duties of the district attorney in each of the counties of Andrews, Cameron, Castro, Falls, Fannin, Freestone, Grayson, Limestone, Morris, Ochiltree, Orange, Red River, [~~Robertson,~~] Rusk, and Willacy; and the county attorney or criminal district attorney, as the case may be, of Denton County.

SECTION 2. COMPENSATION OF COUNTY ATTORNEY OF ROBERTSON COUNTY. (a) For representing the state before the district court in Robertson County the county attorney of Robertson County is entitled to be compensated by the state in the manner and amount fixed by law for district attorneys generally.

(b) The Commissioners Court of Robertson County may also compensate the county attorney in the amount it considers advisable.

(c) If the county attorney receives compensation from the state under this Act, Robertson County is not entitled to receive funds under Section 13(b), Chapter 465, Acts of the 44th Legislature, 2nd Called Session, 1935 (Article 3912e, Vernon's Texas Civil Statutes).

SECTION 3. SUPPLEMENTAL SALARY OF DISTRICT ATTORNEY OF 39th JUDICIAL DISTRICT. The commissioners court of one or more of the counties comprising the 39th Judicial District may supplement the salary of the district attorney. The supplemental salary may be paid from a county's general fund or officers' salary fund.

SECTION 4. REPEALER. The following laws are repealed:

(1) Subsection (c), Section 4.013, Judicial Districts Act of 1969 (Article 199a, Vernon's Texas Civil Statutes);

(2) Sections 2(b) and 3, Chapter 519, Acts of the 62nd Legislature Regular Session, 1971 (Article 326k-67, Vernon's Texas Civil Statutes);

(3) Chapter 396, Acts of the 63rd Legislature, Regular Session, 1973 (Article 332b, Vernon's Texas Civil Statutes); and

(4) Chapter 755, Acts of the 61st Legislature, Regular Session, 1969 (Article 3887a-1, Vernon's Texas Civil Statutes).

SECTION 5. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 18 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 18** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 402

Senator Truan called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 402** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 402** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Truan, Chairman; Harris, Henderson, Blake, Whitmire.

COMMITTEE SUBSTITUTE HOUSE BILL 1010 ON SECOND READING

Senator Howard asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1010, Relating to professional corporations.

There was objection.

Senator Howard then moved to suspend the regular order of business and take up **C.S.H.B. 1010** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Parmer, Santiesteban, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Glasgow, Montford, Parker, Sharp.

Absent: Lyon, Mauzy, McFarland, Washington.

The bill was read second time and was passed to third reading.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1010 ON THIRD READING

Senator Howard moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1010** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 4.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Glasgow, Montford, Parker.

Absent: Lyon, Mauzy, McFarland, Washington.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Parmer, Santiesteban, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Glasgow, Montford, Parker, Sharp.

Absent: Lyon, Mauzy, McFarland, Washington.

HOUSE BILL 2375 ON SECOND READING

On motion of Senator Blake and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2375, Relating to the purchase and management of telecommunications and automated information items for state government and the provision of telecommunications service to state government.

The bill was read second time.

Senator Blake offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2375**, SECTION 2, (a) by adding the following language at the end of the paragraph:

If, during the period of time this paragraph is in effect, any supplemental or other telecommunications service is required by the state, it may be acquired from vendors other than the utility providing TEXAN service.

The committee amendment was read and was adopted.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 1

SECTION 2.08 is amended by adding the following to Section 2.08, as subsection 2(d):

"This 15-year projection shall include a cost analysis and a general impact study of a potential local measured telephone service plan on all state governmental

bodies, which may include data from the previous proposed Public Utility Commission Docket No. 5547, which measures the distance, duration, or time of day of calls made within a local calling area. The cost analysis shall include separate data on the transmission of voice communication and separate data on data communication. This cost analysis and general impact study shall be prepared before September 1, 1987."

The amendment was read and was adopted.

RECORD OF VOTE

Senator Jones asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 2

SECTION 2 is amended by adding the following language after subsection (b):

Section 87C. The commission may not approve any new local exchange service rate which is based partially or wholly on the duration, distance, or time of day for calls made within the same local calling area before the Automated Information and Telecommunications Council's due date on its local measured service cost analysis and impact study of September 1, 1987. This section expires September 1, 1987.

The amendment was read.

POINT OF ORDER

Senator Harris raised the Point of Order against the consideration of Floor Amendment No. 2, stating it was not germane to the bill.

The Presiding Officer (Senator Brooks in Chair) overruled the Point of Order.

Question recurring on the adoption of Floor Amendment No. 2.

On motion of Senator Blake, Floor Amendment No. 2 was tabled by the following vote: Yeas 17, Nays 13.

Yeas: Blake, Brown, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Montford, Santiesteban, Sims, Traeger, Whitmire, Williams.

Nays: Barrientos, Brooks, Caperton, Edwards, Lyon, Mauzy, Parker, Parmer, Sarpalius, Sharp, Truan, Uribe, Washington.

Absent: McFarland.

On motion of Senator Blake and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 2375 ON THIRD READING

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2375** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

(President in Chair)

HOUSE BILL 1344 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1344, Relating to the officers who are authorized to enforce weight limits for motor vehicles.

The bill was read second time.

Senator Sarpalius offered the following amendment to the bill:

Amend **H.B. 1344**, Senate Committee Version, as follows:

(1) On page 1, line 18, after the words "or more" add "in counties with population of 800,000 or more";

(2) On page 1, line 31, after the words "or more" add "in counties with population of 800,000 or more";

(3) On page 1, line 60, after the words "or more" add "in counties with population of 800,000 or more";

(4) On page 2, line 25, after the word "population" add "in counties with population of 800,000 or more".

The amendment was read.

The amendment failed of adoption by the following vote: Yeas 14, Nays 17.

Yeas: Brooks, Edwards, Glasgow, Howard, Kothmann, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Whitmire.

Nays: Barrientos, Blake, Brown, Caperton, Farabee, Harris, Henderson, Jones, Krier, Lyon, Mauzy, Parmer, Traeger, Truan, Uribe, Washington, Williams.

The bill was passed to third reading.

RECORD OF VOTES

Senators Howard and Sarpalius asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MOTION TO PLACE HOUSE BILL 1344 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1344** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 23, Nays 8. (Not receiving four-fifths vote of Members present)

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Jones, Kothmann, Krier, Lyon, McFarland, Mauzy, Parker, Parmer, Santiesteban, Sharp, Truan, Uribe, Whitmire, Williams.

Nays: Glasgow, Howard, Leedom, Montford, Sarpalius, Sims, Traeger, Washington.

SENATE BILL AND RESOLUTIONS ON FIRST READING

On motion of Senator Brooks and by unanimous consent, the following bill and resolutions were introduced, read first time and referred to the Committee indicated:

S.B. 1496 by Washington — Jurisprudence

Relating to the circumstances under which a parked vehicle may not be removed by a towing company; providing a penalty.

S.C.R. 185 by Brooks Administration
Directing the Texas Board of Human Resources of the Texas Department of Human Resources to place a moratorium on implementing new minimum standards for child day-care centers until further legislative review.

S.R. 525 by Brooks Administration
Establishing an Interim Committee on Coastline Rehabilitation.

HOUSE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution received from the House were read the first time and referred to the Committee indicated:

H.C.R. 207, To Committee on Jurisprudence.
H.B. 1283, To Committee on Jurisprudence.
H.B. 1544, To Committee on Criminal Justice.
H.B. 1555, To Committee on State Affairs.
H.B. 1851, To Committee on State Affairs.
H.B. 1929, To Committee on Criminal Justice.
H.B. 2488, To Committee on Natural Resources.
H.B. 2516, To Committee on State Affairs.

SENATE RULE 103 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider the following bills today:

H.B. 2502
H.B. 2488

SENATE RULE 103 SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider the following bills today:

H.B. 903
H.B. 912
H.B. 2096
H.B. 2420
H.B. 2520
H.B. 2516
H.B. 1555

SENATE RULE 103 SUSPENDED

On motion of Senator Blake and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Administration might consider the following resolutions today:

S.R. 518
S.R. 520
S.R. 525
S.C.R. 185

HOUSE BILL 1344 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1344** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Jones, Kothmann, Krier, Lyon, McFarland, Mauzy, Parker, Parmer, Santiesteban, Sharp, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Howard, Leedom, Montford, Sarpalius, Sims, Washington.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Jones, Kothmann, Krier, Lyon, McFarland, Mauzy, Parker, Parmer, Santiesteban, Sharp, Sims, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Glasgow, Howard, Leedom, Montford, Sarpalius, Traeger.

SENATE RULE 103 SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider the following bill and resolution today:

H.C.R. 207
S.B. 1496

RECESS

On motion of Senator Mauzy, the Senate at 12:25 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The Senate met at 2:00 o'clock p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1123, Relating to the regulation and supervision of savings and loan associations.

S.B. 118, Relating to the continuation and operation of the Texas Rehabilitation Commission, the administration of developmental disability services, the abolition of the Texas Commission for the Deaf...(Substituted)

S.B. 725, Relating to the administration, powers and duties, and continuation of the Texas Air Control Board, to the authority of the board to set fees and impose administrative penalties, to the creation of the Texas Clean...(Substituted)

S.B. 254, Relating to the continuation of the office of the Gulf States Marine Fisheries Compact Commissioner for Texas and to notice of commission meetings.

S.B. 384, Relating to the continuation, composition, powers, and duties of the Texas Commission for the Deaf, to audit of the commission, and to the composition of the council on disabilities. (Amended)

S.B. 791, Relating to requirement for a saltwater sportfishing stamp and to a trout stamp, to fees for those stamps, and to disposition and use of receipts. (Amended)

S.B. 955, Relating to regulation of certain out-of-state group accident and health insurance coverage under state law and by the State Board of Insurance. (Amended)

S.C.R. 65, Relating to a public Information Emergency System (PIES).

S.C.R. 184, Relating to suspension of a conference committee rules on **H.B. 1593**.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Santiesteban submitted the following report for the Committee on Natural Resources:

H.B. 2502
H.B. 2488 (Amended)

By unanimous consent, Senator Harris submitted the following report for the Committee on Economic Development:

C.S.H.B. 1682

SENATE BILL 497 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 497** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Schlueter

Amend **S.B. 497** by striking Section 5 and substituting in lieu thereof the following:

SECTION 5. CREATION OF THE CORPORATION. The Texas Savings and Loan Supplemental Fund Corporation is created as a nonprofit legal entity. Membership in the corporation shall be available to any savings and loan association chartered under the laws of Texas which is insured by the Federal Savings & Loan Insurance Corporation and which meets the membership standards approved by the Commissioner and adopted by the Board of Directors as a part of the Plan of Operation. A savings and loan association is eligible for membership only so long as it remains insured by the Federal Savings & Loan Insurance Corporation. The Corporation is under the supervision of the Commissioner.

The amendment was read.

Senator McFarland moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 270 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 270** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amend **S.B. 270** by substituting the following for SECTION 2, renumbering SECTION 2 as 3:

Committee Amendment - O. Garcia

SECTION 2. **H.B. 275**, as enacted by the 69th Legislature, is amended by amending Section 7(a) to read as follows:

"(a) This Act does not apply to payments by a governmental entity or a vendor in the event:

(1) the terms of a contract specify other times and methods of payment or methods of resolving disputes, or interest owed on delinquent payments; or

(2) there is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier concerning the supplies, materials, or equipment delivered or the services performed which causes the payment to be late; or

(3) the terms of a federal contract, grant regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or

(4) the invoice is not mailed to the addressee in strict accordance with instructions, if any, on the purchase order covering said payment.

The amendment was read.

Senator Leedom moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 550 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 550** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Finnel

Substitute the following for **S.B. 550**:

A BILL TO BE ENTITLED
AN ACT

relating to suspending or denying a minor's driver's license or permit for conduct that violates certain state laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 54.042, Family Code, is amended to read as follows:

Sec. 54.042. LICENSE SUSPENSION. (a) A [~~When a child has been found to have engaged in conduct that violates the laws of this state prohibiting driving while intoxicated, the~~] juvenile court, in a disposition hearing under Section 54.04 of this code, shall order the Department of Public Safety to suspend a [~~the~~] child's driver's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child if the court finds that the child has engaged in conduct that violates the laws of this state prohibiting:

(1) driving while intoxicated under Article 6701l-1 Revised Statutes; or

(2) the use, possession, manufacture, or delivery of a controlled substance or marihuana under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(b) The order shall specify a period of suspension or denial that is:

(1) until the child reaches the age of 17 or for a period of [~~not less than 90 days or more than~~] 365 days, whichever is longer; or

(2) if the court finds that the child has engaged in conduct violating the laws of this state prohibiting driving while intoxicated under Article 6701l-1, Revised Statutes, and also determines that the child has previously been found to have engaged in conduct violating the same laws, until the child reaches the age of 19 [~~at which he may legally purchase alcoholic beverages~~] or for a period of 365 days, whichever is longer.

(c) A child whose driver's license or permit has been suspended or denied pursuant to this section may (if the child is otherwise eligible for, and fulfills the requirements for issuance of, a provisional driver's license or permit under Article 6687b, Vernon's Texas Civil Statutes) apply for and receive an occupational license in accordance with the provisions of Section 23A, Article 6687b, Vernon's Texas Civil Statutes.

[~~(c) The court may defer the issuance of an order, described by Subdivision (1) of Subsection (b) of this section if the court orders the child to attend and~~

~~successfully complete the educational program authorized by Section 6e, Article 42.13, Code of Criminal Procedure, 1965. If at any time the court determines that the child is not making a good faith effort to successfully complete the educational program, it may issue the order for the specified in Subdivision (1) of Subsection (b).~~]

SECTION 2. This Act takes effect September 1, 1985, and applies only to findings of a juvenile court based on conduct that occured on or after that date. Conduct that occured before the effective date of this Act is covered by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Caperton moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 24, Nays 2, Present-not voting 1.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Harris, Henderson, Howard, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Washington.

Present-not voting: Glasgow.

Absent: Farabee, Jones, Santiesteban, Sarpalius.

SENATE BILL 455 WITH HOUSE AMENDMENTS

Senator Mauzy called **S.B. 455** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Adkisson

Substitute the following for **S.B. 455**:

A BILL TO BE ENTITLED

AN ACT

relating to procedures and practices in suits affecting the parent-child relationship and to the repeal and redesignation of certain provisions relating to suits for the support, conservatorship, or possession of or access to a child.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.03, Family Code, is amended to read as follows:

Sec. 11.03. WHO MAY BRING SUIT. (a) An original [~~A~~] suit affecting the parent-child relationship may be brought at any time by:

(1) a parent of the child;

(2) [~~any person with an interest in the child, including~~] the child (through a representative authorized by the court);

(3) a custodian or person having rights of visitation with or access to the child appointed by an order of a court of another state or country, or by a court of this state before January 1, 1974;

(4) a guardian of the person or of the estate of the child;

(5) a governmental entity;

(6)[~~, any agency of the state or of a political subdivision of the state, and~~] any authorized agency;

(7) the alleged or probable father of an illegitimate child filing in accordance with Chapter 13 of this code, but not otherwise;

(8) a[~~. A~~] person who has had actual [~~an interest in a child if the person has had~~] possession and control of the child for at least six months immediately preceding the filing of the petition; or [~~is named in Section 11.09(a) of this code as being entitled to service by citation~~]

(9) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Section 15.03 of this code or to whom consent to adoption has been given in writing under Section 16.05 of this code.

(b) An original suit affecting the parent-child relationship seeking managing conservatorship may be brought by a grandparent or other person deemed by the court to have had substantial past contact with the child sufficient to warrant standing to do so, if there is satisfactory proof to the court that:

(1) the child's environment with the parent or parents, the managing conservator, or the custodian may endanger the child's physical health or significantly impair the child's emotional development; or

(2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

(c) An original suit affecting the parent-child relationship seeking possessory conservatorship may be brought by a grandparent or other person deemed by the court to have had substantial past contact with the child sufficient to warrant standing to do so only by intervening in a pending suit affecting the parent-child relationship filed by a person authorized to do so under Subsection (a) or (b) of this section. However, access to the child by a grandparent is governed by the standards established by Section 14.03 of this code.

(d) An original suit affecting the parent-child relationship seeking only an adoption, or for termination of the parent-child relationship joined with a petition for adoption, may be brought by:

(1) a stepparent of the child;

(2) an adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period immediately preceding the filing of the petition;

(3) an adult who has had actual possession and control of the child for at least two months during the three-month period immediately preceding the filing of the petition; or

(4) another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so.

(e) A petition for further action may be brought by a managing or a possessory conservator or by any person or entity who would be authorized to file an original suit affecting the parent-child relationship as provided by this section.

(f) A motion to modify under Section 14.08 of this code may be filed by any party affected by the prior order or the portion of the decree to be modified.

(g) Except as provided by Subsection (h) of this section, if the parent-child relationship between the child and every living parent of the child has been terminated, a suit affecting the parent-child relationship may not be brought by:

(1) a former parent whose parent-child relationship with the child has been terminated by court decree;

(2) the biological father of the child; or

(3) a family member or relative, by blood, adoption, or marriage, of either a former parent whose parent-child relationship has been terminated or of the biological father of the child.

(h) The limitations on filing suit imposed by Subsection (g) of this section do not apply to any person who:

(1) has a continuing right to possession of or access to the child under an existing court order; or

(2) has the consent of the child's managing convervator, guardian, or legal custodian to bring the suit.

SECTION 2. Sections 11.04(a) and (c), Family Code, are amended to read as follows:

(a) Except as otherwise provided in this subtitle, an original [a] suit affecting the parent-child relationship shall be brought in the county where the child resides, unless:

(1) another court has continuing exclusive jurisdiction under Section 11.05 of this code; or

(2) venue is fixed by Section 3.55 of this code.

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) [~~if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or~~] if a custodian for the child has been appointed by order of a court of this state before January 1, 1974, the child resides in the county where the [~~managing conservator or~~] custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and if [~~neither~~] a managing conservator, a custodian, or [~~nor~~] a guardian of the person has not been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) [~~neither~~] a managing conservator, a custodian, or [~~nor~~] a guardian of the person has not been appointed or (B) the whereabouts of the parent and [~~managing conservator or~~] the guardian of the person is unknown or (C) the person whose residence would otherwise determine [~~determines~~] the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having actual possession, care, and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides if that person resides in this state; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

SECTION 3. Section 11.06(j), Family Code, is amended to read as follows:

(j) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. The transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

SECTION 4. Section 11.07(c), Family Code, is amended to read as follows:

(c) On the receipt by a court of continuing jurisdiction of a petition requesting further action concerning the child, a motion to modify the decree, or a contempt motion with respect to a court order concerning the child [~~in the court of continuing jurisdiction~~], the clerk shall file the petition or motion and all other papers relating to the request for further action or to the motion in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding without additional letters, digits, or special designations, except that if the petition requests the adoption of the child and if the petition alleges that the child has been

placed for adoption with the petitioners by the Texas Department of Human Resources or by an agency authorized by the department to place children for adoption, the clerk shall file the petition and all other papers relating to the suit in a new file having a new docket number.

SECTION 5. Section 11.09(c), Family Code, is amended to read as follows:

(c) Citation [~~(i) Except in a suit in which termination of the parent-child relationship is sought, citation~~] on the filing of an original [a] petition in a suit affecting the parent-child relationship, a petition requesting further action under Section 11.07 of this code, or a motion to modify under Section 14.08 of this code [~~or notice of a hearing~~] shall be issued and served as in other civil cases [~~except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.~~

[~~(ii) In a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases~~].

SECTION 6. Section 11.12(c), Family Code, is amended to read as follows:

(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence. In a contested case, the agency or person making the social study shall furnish copies of the study to the attorneys for the parties before the earlier of:

(1) the seventh day after the day the social study is completed; or

(2) the fifth day before the date of commencement of the trial.

SECTION 7. Section 11.15(b), Family Code, as added by Section 5, Chapter 424, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Section 11.155, Family Code, without affecting Section 11.15(b), Family Code, as added by Section 2, Chapter 298, Acts of the 68th Legislature, Regular Session, 1983, and is amended to read as follows:

Sec. 11.155. INCLUSION OF SOCIAL SECURITY NUMBERS IN DECREE. [~~(b)~~] A decree in a suit affecting the parent-child relationship[~~, in which any person is ordered to pay child support,~~] must contain the social security number of each party to the suit, including the child, except that the child's social security number is not required if the child has not been assigned a social security number.

SECTION 8. Subsection (e), Section 14.03, Family Code, as amended by Section 4, Chapter 402, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Subsection (f) to read as follows:

(f) [~~(e)~~] If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of the child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. This relief may not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce the decree.

SECTION 9. Subsections (e) and (f), Section 14.03, Family Code, as added by Section 2, Chapter 328, Acts of the 68th Legislature, Regular Session, 1983, are redesignated as Subsections (g) and (h) to read as follows:

(g) [~~(e)~~] In any decree providing for possessory interests in a child the court may, if it finds that it is in the best interests of the child because of a history of

conflicts and difficulties in resolving the issue of conservatorship or possession of or access to the child, order any party to participate in counseling with persons appointed or approved by the court for the purpose of facilitating compliance with the court order. The court may order the party to pay the costs of counseling.

(h) [~~(ff)~~] On the motion of any party or on the court's own motion, the court may order any person who has possessory interests in a child, and who the court finds may violate the court order relating to the possessory interests in a child, to file a bond or to place security with the court in an amount set by the court and conditioned on the faithful performance of the person's duties and obligations under the court order with respect to the possessory interests in a child.

SECTION 10. Section 14.05(b), Family Code, is amended to read as follows:

(b) If the court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period. The court may enter an order under this subsection only if a request for an order of extended support under this subsection has been made in the original suit, a petition requesting further action under Section 11.07 of this code, or a motion to modify under Section 14.08 of this code filed before the child's 18th birthday.

SECTION 11. Sections 14.08(b) and (g), Family Code, are amended to read as follows:

(b) The provisions of the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply to a motion to modify under this section and to a petition requesting further action under Section 11.07 of this code. Each party whose rights, privileges, duties, or powers may be affected by the motion to modify or by the petition requesting further action is entitled to receive [~~at least 30 days'~~] notice by the service of citation commanding the person to appear by filing a written answer. After the filing of an answer, the proceedings are conducted in the same general manner as in other civil cases [~~of a hearing on the motion to modify~~].

(g) While a motion to modify or a petition for further action is pending, the court may not issue temporary orders under Section 11.11 of this code that have the effect of changing the designation of the managing conservator unless:

(1) the order is necessary because there is a serious, immediate question concerning the welfare of the child; or

(2) the child's managing conservator has voluntarily relinquished the actual care, control, and possession of a child for more than 12 months, and the temporary order is in the best interest of the child.

SECTION 12. Subsection (e), Section 14.09, Family Code, as added by Section 3, Chapter 328, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Subsection (g) to read as follows:

(g) [~~(e)~~] A suit for damages under Chapter 36 of this code may be joined with any proceeding under this section for the enforcement of a court order relating to the possession of or access to a child.

SECTION 13. Subsection (e), Section 14.09, Family Code, as added by Section 3, Chapter 402, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Subsection (h) to read as follows:

(h) [~~(e)~~] If a self-employed person, or a person employed by an employer not subject to the jurisdiction of the court, or a person to whom the application of Sec. 14.091 is impracticable fails to make two or more child support payments as required by court order, the court, in addition to other remedies provided by this chapter, may order the person to execute a bond, subject to the approval of the court, or pay security to the court, the bond or security to be conditioned on the payment of past-due and future child support payments as required by the court

order. If the person fails to make a child support payment as required by the court order after having executed a bond or having paid security to the court, the court may collect on the bond or may forfeit all or a portion of the security. An amount collected from a bond or an amount of forfeited security shall be paid to the person entitled to receive the support payment for the benefit of the child and shall be applied to the outstanding indebtedness of the person. The application of bond or security funds to the person's indebtedness is not a defense in a contempt of court proceeding. In this subsection, "self-employed person" means an individual who received 80 percent or more of his annual income from sources other than wages or salary.

SECTION 14. The section heading of Section 11.06, Family Code, is amended to read as follows:

Sec. 11.06. TRANSFER OF PROCEEDINGS WITHIN THE STATE.

SECTION 15. Chapter 447, Acts of the 56th Legislature, Regular Session, 1959 (Article 4639c, Vernon's Texas Civil Statutes), is repealed.

SECTION 16. This Act takes effect September 1, 1985.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Denton

Amend **C.S.S.B. 455**, Section 13. Section 14.09, Family Code by adding Subsection (i) to read as follows:

(i) The court in which a motion to enforce a child support order under this section, Section 14.091 of this code, or Rule 308-A, Texas Rules of Civil Procedure, is pending shall give preference to the pending motion in setting a date for a hearing and may not continue or postpone the hearing because of a motion under Section 14.08 of this code to modify the order on which the support obligation is founded.

The amendments were read.

Senator Mauzy moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 681 WITH HOUSE AMENDMENT

Senator Jones called **S.B. 681** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - Oliveira

Amend **S.B. 681** to read as follows:

(1) On page 8, between lines 19 and 20, insert the following as SECTION 10 and renumber subsequent sections accordingly:

SECTION 10. Section 17.08, Business & Commerce Code, is amended to read as follows:

Sec. 17.08. PRIVATE USE OF GREAT SEAL OF TEXAS [~~USING REPRESENTATION OF GREAT SEAL OF TEXAS IN ADVERTISING~~]. (a) In this section:

(1) "Commercial purpose" means a purpose that is intended to result in a profit or other tangible benefit but does not include an official use in a state function or the use of the Great Seal of Texas or a representation of the Great Seal of Texas for a political purpose by an elected official of this state;

(2) "Representation of the Great Seal of Texas" includes a nonexact representation that the secretary of state determines is deceptively similar to the Great Seal of Texas;

(3) "Official use" means the use of the Great Seal of Texas by an officer or employee of this state in performing a state function;

(4) "State function" means a state governmental activity authorized or required by law.

(b) Except as otherwise provided by this section, a [~~No~~] person may not use a representation of the Great Seal of Texas:

(1) to advertise or publicize tangible personal property or a commercial undertaking; or

(2) for another [a] commercial purpose. [~~(54th Legis., Ch. 350, Sec. 1, sen. 1.)~~]

(c) A person may use a representation of the Great Seal of Texas for a commercial purpose if the person obtains a license from the secretary of state for that use. The secretary of state, under the authority vested in the secretary as custodian of the seal under Article IV, Section 19, of the Texas Constitution, shall issue a license to a person who applies for a license on a form provided by the secretary of state and who pays the fees required under this section if the secretary of state determines that the use is in the best interests of the state and not detrimental to the image of the state. A license issued under this section expires one year after the date of issuance and may be renewed.

(d) The secretary of state shall adopt rules relating to the use of the Great Seal of Texas by a person licensed under this section. The secretary of state shall adopt the rules in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) The application fee for a license under this section is $35. The license fee for an original or renewal license is $250. In addition to those fees, each licensee shall pay an amount equal to three percent of the licensee's annual gross receipts related to the licensed use in excess of $5,000 to the state as a royalty fee.

(f) A person licensed under this section shall maintain records relating to the licensee's use of the Great Seal of Texas in the manner required by the rules of the secretary of state. The secretary of state may examine the records during reasonable business hours to determine the licensee's compliance with this section. Each licensee shall display the license in a conspicuous manner in the licensee's office or place of business.

(g) The secretary of state may suspend or revoke a license issued under this section for failure to comply with this section or the rules adopted under this section. The secretary of state may bring a civil action to enjoin a violation of this section or the rules adopted under this section.

(h) [~~(b)~~] A person who reproduces an official document bearing the Great Seal of Texas does not violate Subsection (b) [~~(a)~~] of this section if the document is:

(1) reproduced in complete form; and

(2) used for a purpose related to the purpose for which the document was issued by the state. [~~(54th Legis., Ch. 350, Sec. 1, sen. 3.)~~]

(i) [~~(c)~~] A person who violates a provision of Subsection (b) [~~(a)~~] of this section commits an offense. An offense under this section is a Class C [~~is guilty of~~ a] misdemeanor [~~and upon conviction is punishable by a fine of not less than $50 nor more than $100~~]. [~~(54th Legis., Ch. 350, Sec. 1, sen. 2 (part).)~~]

(j) [~~(d)~~] A person who violates Subsection (b) [~~(a)~~] of this section commits a separate offense each day that the person [~~he~~] violates a provision of that subsection. [~~(54th Legis., Ch. 350, Sec. 1, sen. 2 (part).)~~]

The amendment was read.

Senator Jones moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 346 WITH HOUSE AMENDMENT

Senator Glasgow called **S.B. 346** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - A. Luna

Substitute the following for **S.B. 346**:

A BILL TO BE ENTITLED
AN ACT

relating to the definition of abusable glue or aerosol paint under the Texas Controlled Substances Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4.13(e), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

"(e) In this section, '[~~abusable~~] glue [~~or aerosol paint~~]' means an adhesive substance intended to be used to join two surfaces. 'Aerosol paint' means aerosolized paint products, including clear or pigmented lacquers and finishes. 'Abusable glue or aerosol paint' means glue or aerosol paint which is:

"(1) packaged in a container holding a pint or less by volume or less than two pounds by weight; and

"(2) labeled in accordance with the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Sections 1261 to 1274), and under regulations adopted under that Act (16 C.F.R. Part 1500 (1984)), as those regulations may be amended from time to time [~~or aerosol mixture of pigment and liquid that forms a thin coating containing any of the following volatile solvents:~~

"[~~(1) acetone;~~
"[~~(2) amyl acetate;~~
"[~~(3) benzol or benzene;~~
"[~~(4) butyl acetate;~~
"[~~(5) butyl alcohol;~~
"[~~(6) carbon tetrachloride;~~
"[~~(7) chloroform;~~
"[~~(8) cyclohexanone;~~
"[~~(9) ethanol or ethyl alcohol;~~
"[~~(10) ethyl acetate;~~
"[~~(11) hexane;~~
"[~~(12) isopropanol or isopropyl alcohol;~~
"[~~(13) isopropyl acetate;~~
"[~~(14) methyl 'cellosolve' acetate;~~
"[~~(15) methyl ethyl ketone;~~
"[~~(16) methyl isobutyl ketone;~~
"[~~(17) toluol or toluene;~~
"[~~(18) trichloroethylene;~~
"[~~(19) tricresyl phosphate; or~~
"[~~(20) xylol or xylene~~]."

SECTION 2. (a) The change in law made by this Act applies only to a prosecution for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect September 1, 1985.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Glasgow moved to concur in the House amendment.

The motion prevailed.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 30, Relating to the elements of the offense of theft, evidence admissible in the prosecution of the offense, character of stolen property, and defenses that are unavailable to the defendant in the prosecution of the offense. (Amended)

S.B. 489, Relating to annual reports to the State Property Tax Board by taxing units and appraisal districts. (Amended)

S.B. 581, Relating to creation of an offense for failure of certain persons temporarily released from custody while serving a criminal sentence to return to custody as required. (Amended)

S.B. 189, Relating to communications with participants in the decision-making process in a contested case under state agency jurisdiction; making certain exceptions. (Amended)

S.B. 1297, Relating to the official court reporters of the county courts at law of Lubbock County and to the salary of the judges of those courts.

S.B. 1083, Relating to the creation, implementation, administration, operation, and financing of the Texas Brush Control Program under the jurisdiction of the State Soil and Water Conservation Board and to powers and duties...

S.B. 1298, Relating to the supplemental compensation of the district judges in Lubbock County. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 415 WITH HOUSE AMENDMENT

Senator Glasgow called **S.B. 415** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Morales

Amend **S.B. 415** as follows:

(1) On page 1, Line 21, before SECTION 2, add:

(b) It is an affirmative defense to prosecution under this section that the person to whom the substance was delivered or sold exhibited to the defendant an apparently valid Texas driver's license or an identification card issued by the Texas

Department of Public Safety, containing a physical description consistent with the person's appearance, that purported [~~a draft card, driver's license, birth certificate, or other official or apparently official document purporting~~] to establish that the person was an individual 17 years of age or older.

The amendment was read.

Senator Glasgow moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 435 WITH HOUSE AMENDMENTS

Senator Uribe called **S.B. 435** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Jackson

Amend **S.B. 435** by striking Section 8(c) and inserting in lieu thereof the following:

Not later than the 60th day after the day the qualified applications have been selected, the board or its designee shall request from the Comptroller a fiscal impact statement containing an estimate of revenue effects of the proposed nomination on the State of Texas and all affected political subdivisions. (~~If the area is found to be qualified to be an enterprise zone, the board or its designee shall, not later than the 45th day after the day the application is received,~~) After receiving the fiscal impact statement the board or its designee shall hold at least one public hearing in a central location within each of the qualifying areas (~~proposed zone~~) on the question of whether the area nominated (~~proposed~~) to be an enterprise zone should be so designated. Not later than the 15th day before the day of the hearing, the board shall place a notice of the hearing in at least two newspapers circulated in the area of the nominated (~~proposed~~) zone and shall notify public officials, community and neighborhood organizations, and public agencies located within the nominated (~~proposed~~) zone of the public hearing.

Committee Amendment No. 2 - Wolens

Amend SECTION 3, Sec. 8, subsection (g) to read as follows:

(g) In deciding the areas that should be designated as local or state-federal enterprise zones, the board shall give preference to:

(1) areas with the highest levels of poverty [~~, unemployment,~~] and general distress;

(2) areas located in cities or counties with an unemployment rate that exceeds the statewide unemployment rate by 50 percent or more;

(3) areas that have the widest support from the government seeking designation and the community, residents, local businesses, and private organizations; and

(4) areas for which the government seeking the designation has made or will make the greatest effort to encourage economic activity and remove impediments to job creation, including a reduction of tax rates or fees, the adoption of tax abatement or tax increment financing programs, the creation of foreign trade zones, an increase in the level or efficiency of local services, and a simplification or streamlining of governmental requirements on employers or employees, taking into account the resources available to the government to make the efforts.

The amendments were read.

Senator Uribe moved to concur in the House amendments.

The motion prevailed.

(Senator Sharp in Chair)

SENATE BILL 358 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 358** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Richardson

Amend **S.B. 358** as follows:

(1) On page 1, line 19, strike "may" and substitute "shall".

Committee Amendment No. 2 - Richardson

Amend **S.B. 358** as follows:

(1) On page 1, line 24 strike "a" and substitute "any".

(2) On page 2, line 1, strike "a" and substitute "any".

(3) On page 1, line 24 insert "a" after "or".

Floor Amendment No. 1 - Richardson

Amend Committee Amendment No. 2 by striking Section (3) of the Committee Amendment.

Committee Amendment No. 3 - Richardson

Amend **S.B. 358** as follows:

(1) On page 2, strike line 2.

(2) On page 2, line 6, strike "." and substitute "; or".

(3) On page 2, between lines 6 and 7, insert the following:

"(4) any misdemeanor or felony violation of Section 31.03, Penal Code.".

Floor Amendment No. 2 - Uher

Amend **S.B. 358** by adding a new subsection (h) to Section 18 of Section 1 of the Bill to read as follows:

"(h) An institution as defined above nor any of its officers or employees shall not be held liable civilly for failure to request an investigation."

Amend subsection "d", page 2, after the word "fingerprints" on line 8, by adding ",social security number,".

Floor Amendment No. 3 - Richardson

Page 1, lines 13 and 22: Add the word "conviction" between "criminal" and "records".

The amendments were read.

Senator Brown moved to concur in the House amendments.

The motion prevailed.

RECORD OF VOTES

Senators Washington and Truan asked to be recorded as voting "Nay" on the motion to concur.

SENATE BILL 765 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 765** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Shaw

Amend **S.B. 765** as follows:

On page 1, line 8, strike "not an offense" and substitute "an affirmative defense to prosecution".

The amendment was read.

Senator Harris moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 1295 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 1295** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Delco

Amend **S.B. 1295** as follows: Strike the proposed paragraph (2) of subsection 73.503(e) of the Education Code and substitute the following:

"an amount from the state accumulation fund determined by the actuary of the Employees Retirement System to be such that the transfer of funds and service credit under this section will neither increase nor diminish the period required to amortize the unfunded liability of that system."

Floor Amendment No. 1 - Colbert

Amend **S.B. 1295** by striking all below the enacting clause and substituting the following:

relating to the operation, funding, and lease of the Harris County Psychiatric Center and the operation of a commitment center; transferring the Texas Research Institute of Mental Sciences to The University of Texas System; requiring an evolution report to the 70th Legislature; giving priority consideration to employees and providing for retirement benefits; amending Chapter 73, Education Code, by adding Subchapters G and H; repealing Section 2.18 of Chapter 67, Acts of the 59th Legislature, Regular Session, 1965, and repealing Chapter 191, Acts of the 60th Legislature, Regular Session, 1967; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 73, Education Code, is amended by adding new Subchapters G and H to read as follows:

"**SUBCHAPTER G. HARRIS COUNTY PSYCHIATRIC CENTER**

"Section 73.401. ESTABLISHMENT. The Harris County Psychiatric Center has been developed and built by Harris County, Texas, and the Texas Department of Mental Health and Mental Retardation. The facilities of the Harris County Psychiatric Center to be operated by The University of Texas System shall be operated consistent with the rules and regulations of the board of regents and with the provisions of this subchapter.

"Section 73.402. MISSION. The Harris County Psychiatric Center has been established with the mission of caring for mentally ill persons; other major parts of this mission include research into the causes and cures of mental illness and the education of professionals in the care of the mentally ill.

"Section 73.403. OPERATION OF COMMITMENT CENTER. Harris County and/or the Mental Health and Mental Retardation Authority (MHMRA) of Harris County may operate on the premises of the Harris County Psychiatric Center a commitment center, the functions of which may include patient screening,

intake, and admissions (both voluntary and involuntary) to the Harris County Psychiatric Center as may be provided for in a lease and/or sublease and operating agreement as authorized under Section 73.405 of this code. The functions of the Harris County Psychiatric Commitment Center located on the premises of the Harris County Psychiatric Center both in terms of operation and in terms of funding shall not be the responsibility of the Texas Department of Mental Health and Mental Retardation or The University of Texas System. As may be provided for in a lease and/or sublease and operating agreement, The University of Texas System may charge for any support services provided by the Harris County Psychiatric Center to the commitment center.

"Section 73.404. FUNDING. (a) Funding for the state-supported facilities and operations of the Harris County Psychiatric Center shall be provided through legislative appropriations to the Texas Department of Mental Health and Mental Retardation and to The University of Texas System, and any appropriations to the department for the Harris County Psychiatric Center shall be transferred to The University of Texas System in accordance with the General Appropriations Act and the lease and/or sublease and operating agreement provided for in Section 73.405 of this code. Legislative appropriations may be for any further construction at the Harris County Psychiatric Center; for equipment, both fixed and movable; for utilities, including data processing and communications; for maintenance, repairs, renovations, and additions; for any damage or destruction; and for operations of the Harris County Psychiatric Center; provided, however, that as to funding for Harris County Psychiatric Center operations, legislative appropriations shall not exceed 85 percent of the total operating costs of the entire Harris County Psychiatric Center, exclusive of any costs of the commitment center.

"(b) Any funding, under a lease and/or sublease and operating agreement wherein The University of Texas System is the lessee, for the county-supported and/or MHMRA-supported facilities and operations of the Harris County Psychiatric Center, which may be provided through county appropriations, including funds made available by the Harris County Mental Health and Mental Retardation Authority, or from gifts and grants, shall be transferred in accordance with the lease and/or sublease and operating agreement provided for in Section 73.405 of this code. Such funds may be for any further construction at the Harris County Psychiatric Center; for equipment, both fixed and movable; for utilities, including data processing and communications; for maintenance, repairs, renovations, and additions; for any damage or destruction; and for Harris County Psychiatric Center operations which latter funding may be proportional to the total costs of The University of Texas System operating the entire Harris County Psychiatric Center, exclusive of any additional cost of Harris County and/or MHMRA operating the commitment center, which costs shall remain the sole responsibility of Harris County and/or MHMRA.

"Section 73.405. OPERATIONS. (a) The state-supported facilities of the Harris County Psychiatric Center shall be leased to and operated and administered by The University of Texas System in accordance with a lease and operating agreement. The county-supported and/or MHMRA-supported facilities, exclusive of the commitment center, may be leased and/or subleased by The University of Texas System in the same lease and/or sublease and operating agreement. Any lease and/or sublease and operating agreement shall provide for a lease payment by The University of Texas System of no more than $1 per year plus other good and valuable consideration as provided for in Section 73.406 of this code.

"(b) In any lease and/or sublease and operating agreement, the board of regents of The University of Texas System shall be the governing board of the Harris County Psychiatric Center facilities that are leased and/or subleased and operated by The University of Texas System.

"(c) Any lease and/or sublease and operating agreement may provide all necessary or desirable terms for the operation of the Harris County Psychiatric Center and may provide for duties and powers with respect to medical and legal matters, Harris County Psychiatric Center administration, staffing, patient services, reports, annual operating budgets of the Harris County Psychiatric Center, and transfers of appropriated funds as provided for in Section 73.404 of this code.

"(d) Any lease and/or sublease and operating agreement shall provide that The University of Texas System shall cause the Harris County Psychiatric Center to be operated in accordance with the standards for accreditation of the Joint Commission on Accreditation of Hospitals; that all financial transactions and performance programs may be appropriately audited; that an admission, discharge, and transfer coordination policy be established; that appropriate patient data be made available to the department, MHMRA, and the county, including but not limited to diagnosis and lengths of stay; and that a priority of patient treatment policy be established.

"Section 73.406. REVENUES. That portion of any revenues related to the provision of patient services through the operation of the Harris County Psychiatric Center facilities that are leased and/or subleased by and to The University of Texas System shall be accounted for and expended in accordance with the rules, regulations, and bylaws of The University of Texas System and in such manner that such revenues will reduce appropriated and funded requirements by both the state and county or MHMRA on a prorated basis, all as may be provided for in a lease and/or sublease and operating agreement.

"SUBCHAPTER H. RESEARCH INSTITUTE

"Section 73.501. TRANSFER AND LEASE OF FACILITIES. (a) The governance, operation, management, and control of the Texas Research Institute of Mental Sciences created by Chapter 427, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 3174b-4, Vernon's Texas Civil Statutes), and all land, buildings, improvements thereon, and major fixed equipment comprising said institute shall be leased from the Texas Department of Mental Health and Mental Retardation and transferred to the board of regents of The University of Texas System for $1 a year and shall be subject to the provisions of Subdivision (9) of Subsection (a) of Section 65.02 of the Education Code.

"(b) All land, buildings, and improvements thereon and major fixed equipment comprising said institute leased by The University of Texas System shall be utilized only for purposes of patient care services, research, and education related to mental health and mental retardation. The Texas Department of Mental Health and Mental Retardation may sell or otherwise dispose of the land, buildings, improvements thereon, or major fixed equipment provided that the proceeds from the sale or other disposition shall be used for the same purposes in Harris County; and further provided, that the board of regents of The University of Texas System, prior to such sale or other disposition, has approved of such sale or disposal and the allocation of proceeds.

"Section 73.502. TRANSFER OF GIFTS, GRANTS, UNEXPENDED BALANCES, CONTRACTS, AND OBLIGATIONS. Any gifts, grants, unexpended balances of appropriated or unappropriated funds, and all movable equipment held by the Texas Department of Mental Health and Mental Retardation for, on behalf of, or for the use and benefit of the Texas Research Institute of Mental Sciences are hereby transferred to The University of Texas System; provided, however, that all previously appropriated funds for statewide training of department personnel and program evaluation by the institute shall be retained by the department. All contracts and written obligations of every kind and character entered into by the Texas Department of Mental Health and Mental Retardation for and on behalf of the Texas Research Institute of Mental Sciences

are ratified, confirmed, and validated, and in all such contracts and written obligations, the board of regents of The University of Texas System is substituted in lieu and shall stand and act in place and stead of the Texas Department of Mental Health and Mental Retardation; provided, however, that an advisory committee shall be established with regard to research protocols and the commissioner of the department shall be a member; provided further, that The University of Texas System may contract with the department for continued extramural and other laboratory consultative services. The Texas Department of Mental Health and Mental Retardation, Harris County, and the Mental Health and Mental Retardation Authority of Harris County shall provide for the continuity of inpatient and outpatient care of the patients and programs operated at the Texas Research Institute of Mental Sciences and may contract for the provision of such services in accordance with the provisions of and appropriations provided in the General Appropriations Act.

"Section 73.503. EMPLOYEES. (a) Present institute personnel shall be allowed to apply for employment with The University of Texas System, Harris County, or the Mental Health and Mental Retardation Authority of Harris County and be given priority consideration for such employment.

"(b) If employed by The University of Texas System, when the Texas Research Institute for Mental Science is transferred to The University of Texas System, employees of the institute who become employees of the University of Texas System shall become members of the Teacher Retirement System of Texas, if they are otherwise eligible under the law and rules governing membership, and all their service and salary credit shall be transferred from the Employees Retirement System to the Teacher Retirement System, subject to Subsections (c) and (d) of this section.

"(c) Service of those employees that was covered by the Employees Retirement System before the transfer shall thereafter be regarded as service that was covered by the Teacher Retirement System. The law and rules of the Teacher Retirement System pertaining to membership, service and salary credit, member contributions, and reinstatement of withdrawn accounts shall apply to service occurring before the transfer, except that the member contribution rate for such service shall be that in effect for members of the Employees Retirement System. Member contributions previously withdrawn from the Employees Retirement System may be reinstated in the Teacher Retirement System only subject to the laws and rules governing reinstatement of accounts and credit in the Teacher Retirement System.

"(d) Military service credit already established with the Employees Retirement System will be credited by the Teacher Retirement System only when the employee's service credit, excluding military credit, in the Teacher Retirement System consists of at least 10 years. Deposits for military credit transferred under Subsection (e) of this section will be placed in the member savings account of the employee and refunded if the employee dies or retires on a disability benefit before obtaining 10 years of credit. An employee may obtain a total of no more than five years of military service credit in the Teacher Retirement System, including military credit transferred pursuant to this section, and may not receive duplicate credit for the same military duty.

"(e) When credit is transferred pursuant to this section or as soon thereafter as possible, the Employees Retirement System shall transfer to the Teacher Retirement System the following:

"(1) all amounts in the individual member accounts with the Employees Retirement System of employees described in Subsection (b) of this section and any member contributions subsequently received for these employees for service before the date of transfer; and

"(2) an amount from the state accumulation fund determined by the actuary of the Employees Retirement System to be such that the transfer of funds and service credit under this section will neither increase nor diminish the period required to amortize the unfunded liability of that system."

"(f) An employee described in Subsection (b) of this section shall not be entitled to a refund of contributions or retirement from the Employees Retirement System in lieu of the transfer of credit provided by this Act. After the transfer of the institute to The University of Texas System, the employee shall not be entitled to credit in the Employees Retirement System for service subject to transfer to the Teacher Retirement System under this section.

"(g) The legislature may appropriate to the Teacher Retirement System an amount determined necessary to finance the additional actuarial liabilities created by this section and not financed by the transfer of funds provided by Subsection (e) of this section.

"(h) The Employees Retirement System, the Texas Department of Mental Health and Mental Retardation, and The University of Texas System shall provide the Teacher Retirement System with information necessary to establish employees' rights to credit under this section. The Employees Retirement System and the Teacher Retirement System shall establish procedures to prevent duplication of retirement credit for the same service.

"(i) If employed by The University of Texas System, such employees shall be subject to the personnel policies, rules, and regulations of the board of regents of The University of Texas System, after the transfer provided for in this section.

"Section 73.504. NAME OF INSTITUTE. Hereafter, the name of the institute shall be The University of Texas Mental Sciences Institute."

SECTION 2. EVALUATION OF TRANSFER OF RESEARCH INSTITUTE. (a) The University of Texas System, the Texas Department of Mental Health and Mental Retardation, and the Assets Management Division of the General Land Office shall review and evaluate the present and proposed use of the Texas Research Institute of Mental Sciences land and buildings and shall submit a report containing the results of the review to the 70th Legislature.

(b) In conducting the review, the participants shall consider at least the following factors:

(1) the future need for continued use of this land and buildings for outpatient services and mental health sciences research;

(2) alternative locations for any future needed outpatient services and mental health sciences research;

(3) alternatives for disposition of the land and buildings, including the possibility of continued leasing to The University of Texas System, leasing to other entities, or sale of the land and buildings; and

(4) the cost benefits of each alternative for disposition, including the revenue that might be generated and the possibility of applying that revenue toward the provision of mental health services.

(c) Not later than the second Tuesday in January, 1987, the participants in the review shall prepare and submit a report to the 70th Legislature detailing the findings and conclusions made by the participants. This section expires on submission of the report.

SECTION 3. REPEALER. Section 2.18 of Chapter 67, Acts of the 59th Legislature, Regular Session, 1965, and Chapter 191, Acts of the 60th Legislature, Regular Session, 1967, are repealed.

SECTION 4. Any funds generated by the passage of **S.B. 1322**, Acts of the 69th Legislature, Regular Session, for fiscal years 1986 and 1987 are hereby appropriated to the University of Texas System for provision of services as authorized in this Act.

SECTION 5. The sum of $1 million appropriated to the Texas Department of Mental Health and Mental Retardation for the conduct of research at the Texas Research Institute for Mental Sciences in **H.B. 20**, Acts of the 69th Legislature, Regular Session, 1985, shall be transferred by the Department to the University of Texas System for the conduct of that research.

SECTION 6. EFFECTIVE DATE. This Act takes effect on September 1, 1985.

SECTION 7. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

Senator Brooks moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 125 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 125** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Clemons

Amend **S.B. 125** as follows:

(1) On page 2 line 5 insert the following after the second comma and before the word "the": The Savings and Loan Department of Texas,.

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed.

RECORD OF VOTE

Senator Mauzy asked to be recorded as voting "Nay" on the motion to concur.

SENATE BILL 639 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 639** from the President's table for consideration of the House amendment to the bill:

Senator Farabee moved to concur in the House amendment.

On motion of Senator Farabee and by unanimous consent, the motion to concur was withdrawn.

SENATE BILL 72 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 72** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Connelly

Substitute the following for **S.B. 72**:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of offenses involving computers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 7, Penal Code, is amended by adding Chapter 33 to read as follows:

CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. In this chapter:

(1) "Communications common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications, and who receives compensation from persons who use that system.

(2) "Computer" means an electronic device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, or communication facilities that are connected or related to the device. "Computer" includes a network of two or more computers that are interconnected to function or communicate together.

(3) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

(4) "Computer security system" means the design, procedures, or other measures that the person responsible for the operation and use of a computer employs to restrict the use of the computer to particular persons or uses or that the owner or licensee of data stored or maintained by a computer in which the owner or licensee is entitled to store or maintain the data employs to restrict access to the data.

(5) "Data" means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, and punchcards, or may be stored internally in the memory of the computer.

(6) "Electric utility" has the meaning assigned by Section 3(c), Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits an offense if the person:

(1) uses a computer without the effective consent of the owner of the computer or a person authorized to license access to the computer and the actor knows that there exists a computer security system intended to prevent him from making that use of the computer; or

(2) gains access to data stored or maintained by a computer without the effective consent of the owner or licensee of the data and the actor knows that there exists a computer security system intended to prevent him from gaining access to that data.

(b) A person commits an offense if the person intentionally or knowingly gives a password, identifying code, personal identification number, or other confidential information about a computer security system to another person without the effective consent of the person employing the computer security system to restrict the use of a computer or to restrict access to data stored or maintained by a computer.

(c) An offense under this section is a Class A misdemeanor.

Sec. 33.03. HARMFUL ACCESS. (a) A person commits an offense if the person intentionally or knowingly:

(1) causes a computer to malfunction or interrupts the operation of a computer without the effective consent of the owner of the computer or a person authorized to license access to the computer; or

(2) alters, damages, or destroys data or a computer program stored, maintained, or produced by a computer, without the effective consent of the owner or licensee of the data or computer program.

(b) An offense under this section is:

(1) a Class B misdemeanor if the conduct did not cause any loss or damage or if the value of the loss or damage caused by the conduct is less than $200;

(2) a Class A misdemeanor if the value of the loss or damage caused by the conduct is $200 or more but less than $2,500; or

(3) a felony of the third degree if the value of the loss or damage caused by the conduct is $2,500 or more.

Sec. 33.04. DEFENSES. It is an affirmative defense to prosecution under Sections 33.02 and 33.03 of this code that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

Sec. 33.05. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 609 WITH HOUSE AMENDMENTS

Senator Santiesteban called **S.B. 609** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Campbell

Amend proposed **S.B. 609** as follows:

In Section 1, page 3, line 2, add a new subsection (g), Section 76.301, Parks and Wildlife Code, to read as follows:

(g) The Commission shall make no proclamation under this Chapter until it has approved and adopted an Oyster Management Plan and Economic Impact Analysis prepared by the Department as provided in Section 76.302 of this code and unless such proclamation is shown to be consistent with the approved Oyster Management Plan.

Committee Amendment No. 2 - Campbell

Amend proposed **S.B. 609** as follows:

In Section 3, page 6, line 10, add a new subsection (f), Section 77.007, Parks and Wildlife Code, to read as follows:

(f) The Commission shall make no proclamation under this Chapter until it has approved and adopted a Shrimp Management Plan and Economic Impact Analysis prepared by the Department as provided in Section 77.004 and unless such proclamation is shown to be consistent with the Shrimp Management Plan.

Committee Amendment No. 3 - Campbell

Amend proposed **S.B. 609** as follows:

Add a new Section 9 on page 7, line 9, to read as follows:

Section 9. This Act expires September 1, 1991.

and renumber existing Section 9 as Section 10.

Senator Santiesteban moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Brooks.

SENATE BILL 608 WITH HOUSE AMENDMENTS

Senator Henderson called **S.B. 608** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Emmett

Substitute the following for **S.B. 608**:

A BILL TO BE ENTITLED
AN ACT

relating to the levy and collection of assessments on property by certain counties to finance highway improvements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. AUTHORITY TO MAKE IMPROVEMENTS. An eligible county may cause to be improved any highway located within its boundaries including causing to be made any one or more of the kinds or classes of improvements named in this Act. An eligible county may improve the highway and may assess all or a part of the cost of the improvement against property within its boundaries benefited by the improvement in accordance with this Act. Assessments may not be used for routine repair or other routine or regular maintenance of the county road system. Consent, ratification, or approval from any city, town, or village is not required by the eligible county initiating the improvement within its boundaries, if such eligible county is otherwise authorized by law to improve such highway without such consent, ratification, or approval.

SECTION 2. Subsection (c), Section 3, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The governing body has the power by order or resolution to:

(1) [~~deliver certificates of assessment to a contractor employed to construct the improvements benefiting assessed property;~~

[~~(2) sell certificates of assessment on terms that the governing body finds equitable;~~

[~~(3)~~] retain [~~the~~] certificates of assessment; and

(2) [~~(4)~~] pledge any or all the assessments to the payment of public securities subject to Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), including certificates of obligation it is authorized to issue under The Certificate of Obligation Act of 1971, as amended (Article 2368a.1, Vernon's Texas Civil Statutes), whether the special assessments are paid alone or in combination with taxes and revenues or any other source of payment.

SECTION 3. Sections 4, 5, and 7, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. COST OF IMPROVEMENT; ESTIMATE FOR ASSESSMENT. The cost of improvements may be paid wholly by the eligible county with or without reimbursement, wholly by the owners of the property benefited by the highway or the portion of the highway ordered to be improved, or partly by the eligible county and partly by special assessments against property benefited [~~and the owners of the property~~]. If all or any part of the cost is to be paid by special assessments against the property benefited [~~and the owners~~], before any improvements are actually constructed and before any hearing under this Act is held, the governing body shall prepare or cause to be prepared an estimate of the cost of the improvements. In no event shall more than the total cost of improvements as shown on the estimate be assessed against the property [~~and owners of the property~~]. A hearing under this Act may be held before or after construction begins.

Sec. 5. ASSESSMENTS ON PROPERTY; TERMS; CERTIFICATES OF OBLIGATION. (a) Subject to the terms of this Act, the governing body of an eligible county has the power by order or resolution to:

(1) assess all or any part of the cost of improvements against [~~the owners of~~] property benefited by the highway or the portion of the highway ordered to be improved;

(2) provide the time, terms, denominations, and conditions of payment and defaults of the assessments; and

(3) prescribe the rate of interest on the assessments, not to exceed the legal limit on rates established by Chapter 274, Acts of the 60th Legislature, Regular Session, 1967 (Article 5069-1.04, Vernon's Texas Civil Statutes).

(b) The governing body has the power to cause to be issued in the name of the eligible county [~~assignable~~] certificates of obligation in evidence of assessments levied under this Act declaring the lien on the property [~~and the liability of the true owner or owners of the property whether correctly named or not~~] and to fix the terms and conditions of the certificates of obligation. The governing body may not make an assessment on, issue a certificate of obligation for, or establish a lien under this section on property that is a homestead. If a certificate of obligation substantially recites that the proceedings on making the improvements complied with the law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate [~~and the personal liability of the owner or owners of the property~~] have been performed, the certificate is prima facie evidence of all the matters recited in the certificate, and no further proof is required. In a suit on an assessment or reassessment in evidence of which a certificate of obligation may be issued under this Act, a pleading is sufficient if it alleges the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations with reference to the proceedings relating to the assessment or reassessment are not necessary.

(c) Delinquent assessments are collectible together with interest at the then prevailing legal rate, any penalties imposed, expense of collection, and reasonable attorney's fees incurred. [~~An assessment under this Act is a first and prior lien on the property assessed, from the date improvements are ordered, superior to all other liens and claims except ad valorem taxes levied by cities and other political subdivisions. An assessment under this Act is a personal liability and charge against the owners, whether named or not, of the property assessed. The lien may be transferred to other nonexempt property owned by the same person or persons, but if the lien is transferred, it must be recorded in the deed records of each county in which the property encumbered by the assessment is located.~~]

(d) An assessment levied against property that is appraised for property tax purposes under Subchapter C, D, E, F, or G, Chapter 23, Tax Code, may not be collected unless the property is converted to a use not covered by one of those subchapters before the end of the fifth year after the date the assessment was levied.

Sec. 7. NO LIEN ON PROPERTY EXEMPT; NO PERSONAL LIABILITY OF OWNER; ENFORCING LIEN. This Act does not empower an eligible county or its governing body to fix a lien against any interest in property exempt, at the time the improvements are ordered, from the lien of special assessment for highway improvements. The owner or owners of the property are not [~~nevertheless~~] personally liable for any assessment in connection with the property. The lien created against any property [~~and the personal liability of the owner or owners of the property~~] may be enforced by suit in any court of competent jurisdiction and, if necessary, by sale of the property assessed [~~or of other nonexempt property to which the lien may have been transferred,~~] in the same manner as provided by law for sale of property for nonpayment of county ad valorem taxes.

SECTION 4. Section 8, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (c) to read as follows:

(a) An assessment under this Act may not be made against any property [~~or the owners of the property,~~] unless notice and opportunity for hearing have been provided. The true owners of the property may waive in writing notice or the opportunity for hearing. Notice under this section must be by advertisement inserted at least three times in a newspaper of general circulation published in the county where the assessment is to be imposed, unless there is not such a newspaper in the county, in which event notice must be inserted in a newspaper of general circulation published in the nearest county to the eligible county. The first publication of the notice of hearing must be made at least 21 days before the date of the hearing. Additional written notice of the hearing must be given by certified mail, return receipt requested, at least 14 days before the date of the hearing to the owners of the properties benefited by the highway or portion of the highway to be improved. A return receipt is prima facie evidence of providing proper notice, provided the notice is mailed to the owner as listed in the current appraisal or tax rolls as prepared under the Tax Code. If the notice describes in general terms the nature of the improvements for which the assessments are to be levied, states the highway or portion of the highway to be improved, states the estimated amount to be assessed against the [~~owner or owners of~~] property on the highway or portion of the highway, states the estimated total cost of the improvements on the highway or portion of the highway, and states the time and place of the hearing, the notice is sufficient, valid, and binding on all owning or claiming the property or any interest in the property. The notice to be mailed may consist of a copy of the published notice. If an owner of property benefited by a highway or portion of the highway to be improved is listed as "unknown" on the current county or central appraisal district tax roll or the name of an owner is shown on the appraisal or tax roll but no address for the owner is shown, notice need not be mailed. If the owner is shown to be an estate, the mailed notice shall be addressed to the estate.

(c) A person owning or claiming any property assessed, or any interest in the property, who wants to contest the amount of any assessment, any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings relating to the assessment or the improvements, or any matter or thing relating to the assessment or the property assessed [~~not in the discretion of the governing body~~], is entitled to appeal from the hearing by instituting suit for that purpose in any district court in the county imposing the assessments within 30 days from the date of the hearing. A person who fails to institute a suit within the required time period waives every matter which might have been appealed and is barred and estopped from contesting or questioning the assessment, the amount, accuracy, validity, regularity, and sufficiency of the assessment, or the proceedings relating to the assessment and the improvements. It is not a challenge to an assessment that contracts for construction are invalid. [~~The only challenge to an assessment is that the notice of the hearing~~

~~was not made in accordance with this Act or that the assessment exceeds the amount of the estimate.~~]

SECTION 5. Section 9, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. CHANGES IN IMPROVEMENTS; PROCEDURE. The governing body of an eligible county has the power to provide for changes in plans, methods, or contracts for improvements, or other proceedings relating to the improvements. Any change substantially affecting the nature or quality of any improvements and increasing the amount of the assessments may only be made when it is determined by three-fifths [~~two-thirds~~] vote of the governing body that it is not practical to proceed with the improvements as originally planned. If any substantial change is made after any hearing has been ordered or held, unless the improvements are abandoned, a new estimate of cost shall be made, a new hearing shall be ordered and held, and new notices shall be given, all with the same effect and in the same manner as the original notices and hearing. An owner may waive the notice or opportunity for hearing on the change provided the waiver is in writing, notwithstanding any previous waivers for previous planned improvements. Changes in or abandonment of improvements must be with the consent of the persons, firm, or corporation that has contracted with the eligible county for the construction of the improvements, if any contract has been made. In case of abandonment of any particular improvement, an order shall be adopted that cancels any assessments levied for the improvement.

SECTION 6. This Act applies only to assessments made under an order adopted on or after the effective date of this Act. An assessment made under an order adopted before the effective date of this Act is subject to the law in effect when the order was adopted, and the former law is continued in effect for that purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment - Emmett

Amend **C.S.S.B. 608** as follows:

(1) On page 3, line 27, between "homestead" and the period, insert "described by Section 41.001(a)(2), Property Code".

(2) On page 5, strike line 4 and substitute the following:
the end of the 10th year after the completion of construction of the improvement on which the assessment is based.

(3) On page 5, line 12, between "property" and the bracketed language, insert "is equivalent to a county ad valorem tax lien and".

(4) On page 8, between lines 18 and 19, insert a new Section 6 to read as follows and renumber the subsequent sections accordingly:

SECTION 6. The legislature finds that the exemption of certain property from the collection of assessments under Subsection (d), Section 5, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), as added by this Act, is a just and reasonable exemption, based on property tax preferences allowed for certain property in accordance with Article VIII of the Texas Constitution and Chapter 23, Tax Code. If a court determines that an exemption under that subsection is unconstitutional, the determination of unconstitutionality does not affect the other provisions of that law that can be given

effect without that subsection, and the provisions of that law are severable for that purpose.

The amendments were read.

Senator Henderson moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 1867 ON SECOND READING

Senator Santiesteban asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1867, Relating to the regulatory authority of the Railroad Commission of Texas with respect to the management of wastes and the prevention of pollution resulting from activities under its jurisdiction.

There was objection.

Senator Santiesteban then moved to suspend the regular order of business and take up **C.S.H.B. 1867** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Whitmire, Williams.

Nays: Lyon, Mauzy, Truan, Washington.

Absent: Howard, Uribe.

The bill was read second time and was passed to third reading.

RECORD OF VOTES

Senators Mauzy and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1867 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1867** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Whitmire, Williams.

Nays: Lyon, Mauzy, Truan, Washington.

Absent: Howard, Uribe.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 4. (Same as previous roll call)

HOUSE BILL 2076 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2076, Relating to utility submetering for certain dwellings.

The bill was read second time and was passed to third reading.

HOUSE BILL 2076 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2076** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Howard.

The bill was read third time and was passed.

HOUSE BILL 403 ON SECOND READING

Senator Farabee asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 403, Relating to the withholding or withdrawal of life-sustaining procedures from a terminally ill patient.

There was objection.

Senator Farabee then moved to suspend the regular order of business and take up **H.B. 403** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 7.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Krier, Mauzy, Montford, Parker, Parmer, Santiesteban, Sims, Traeger, Uribe, Washington, Whitmire, Williams.

Nays: Brown, Kothmann, Leedom, Lyon, McFarland, Sharp, Truan.

Absent: Sarpalius.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:

H.B. 403, SECTION 3, Section 4D, is amended by deleting subsections (b) and (c) and inserting a new subsection (b) to read as follows:

(b) The desire of a qualified patient who is under 18 years of age and who is competent shall at all times supersede the effect of a directive executed in accordance with this Section.

The committee amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator McFarland asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 403 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 403** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Lyon, Mauzy, Montford, Parker, Parmer, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Brown, Leedom, McFarland, Santiesteban, Sharp, Washington.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Brown, Kothmann, Leedom, Lyon, McFarland, Sharp and Truan asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 601, Relating to the continuation, operations, powers, duties, and composition of the Texas Commission on Alcoholism and the transferral to the commission of the drug abuse programs of the Texas Department of Community Affairs. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 756 ON SECOND READING

Senator Leedom asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 756, Relating to a uniform size for certain supplies and equipment used by state agencies.

There was objection.

Senator Leedom then moved to suspend the regular order of business and take up **H.B. 756** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Barrientos, Blake, Brown, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Washington, Whitmire, Williams.

Nays: Brooks, Caperton, Edwards, Farabee, Krier, Mauzy, McFarland, Montford, Truan.

The bill was read second time and was passed to third reading.

RECORD OF VOTES

Senators Krier and Mauzy asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MOTION TO PLACE HOUSE BILL 756 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 756** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 21, Nays 10. (Not receiving four-fifths vote of the Members present)

Yeas: Barrientos, Blake, Brown, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Whitmire, Williams.

Nays: Brooks, Caperton, Edwards, Farabee, Krier, Mauzy, McFarland, Montford, Truan, Washington.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1470, Relating to the financing of primary elections and to filing fees. (Amended)

S.B. 1007, Relating to the certification and regulation of respiratory care practitioners; to the creation of a Respiratory Care Practitioners Advisory Board; and to the powers and duties of the Texas Board of Health. (Amended)

S.B. 1247, Amending Section 55, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) by adding a new subsection (e); relating to the provision of retail electric utility service. (Amended)

S.B. 578, Relating to the implementation of Section 17(d), Article VII, Texas Constitution; providing for the allocation by equitable formula of the annual appropriation made under Section 17(a), Article VII, Texas... (Amended)

S.B. 1322, Relating to the transfer of unobligated fund balances to the General Revenue Fund. (Amended)

S.B. 105, Relating to the provision, administration, and financing of programs of retirement and death benefits for state-paid judges and to the assignment of persons to sit as judicial officers. (Amended)

S.B. 1442, Relating to the consequences of a member of the faculty at an institution of higher education being absent from work on a religious holy day. (Amended)

S.B. 923, Relating to partnerships between community/junior colleges and upper level universities or centers.

S.B. 1465, Relating to the creation, administration, powers, duties, operation, and financing of the Homestead Municipal Utility District No. 1.

S.B. 1466, Relating to the creation, administration, powers, duties, operation, and financing of the Homestead Municipal Utility District No. 2.

S.B. 1400, Relating to standards of conduct of certain State officers and employees.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1843 ON SECOND READING

Senator Traeger asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1843, Relating to health care for certain indigent individuals, to the establishment of the cancer resource fund, and to certain cigarette taxes.

There was objection.

Senator Traeger then moved to suspend the regular order of business and take up **H.B. 1843** for consideration at this time.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Williams.

Nays: Brown, Leedom.

Absent: Whitmire.

The bill was read second time.

Senator Traeger offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1843** as follows:

(1) In Section 1 of the bill, strike Section 1.03(f) and substitute the following:

(f) For purposes of this Act, a person who is an inmate or resident of a state school or institution operated by the Texas Department of Corrections, Texas Department of Mental Health and Mental Retardation, Texas Youth Commission, Texas School for the Blind, Texas School for the Deaf, or any other state agency, or who is an inmate, patient, or resident of a school or institution operated by a federal agency, is not considered a resident of a hospital district or of any governmental entity except the state or federal government.

(2) Strike Section 9 of the bill and renumber subsequent sections accordingly.

(3) In Section 10 of the bill, strike Subsection (c) of Article 4447x, and substitute a new Subsection (c) to read as follows:

(c) The council shall develop a policy governing the award of funds for clinical research that follows scientific peer review and approval by the National Cancer Institute of the National Institutes of Health or other review procedures that are designed to distribute these funds on the basis of scientific merit.

(4) In Subsection (c) of Section 13 of the bill, strike "7-12" and substitute "7-11".

The amendment was read and was adopted.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1843** as follows:

(1) Strike Sections 7 and 8 and substitute new Sections 7 and 8 to read as follows:

"SECTION 7. Chapter 154, Tax Code, is amended by adding Section 154.0211 to read as follows:

"Sec. 154.0211. ADDITIONAL TAX. (a) An additional tax is imposed on a person who uses or disposes of cigarettes in this state.

"(b) For the period beginning October 1, 1985, the rate of the additional tax is determined on October 1, 1985, and regardless of the weights of the cigarettes, is:

"(1) $4 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is less than $4.50 per thousand;

"(2) $3.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $4.50 but less than $5 per thousand;

"(3) $3 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $5 but less than $5.50 per thousand;

"(4) $2.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $5.50 but less than $6 per thousand;

"(5) $2 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $6 but less than $6.50 per thousand;

"(6) $1.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $6.50 but less than $7 per thousand;

"(7) $1 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $7 but less than $7.50 per thousand; or

"(8) 50 cents per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $7.50 but less than $8 per thousand.

"(c) If the rate under this section as determined on October 1, 1985, is $3, $3.50, or $4 per 1,000 cigarettes, the rate of the tax under this section is redetermined on January 1, 1986, and effective on that date the rate, regardless of the weights of the cigarettes, is:

"(1) $4 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is less than $4.50 per thousand;

"(2) $3.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $4.50 but less than $5 per thousand;

"(3) $3 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $5 but less than $5.50 per thousand; or

"(4) $2.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is $5.50 per thousand or more.

"(d) If the tax rate provided by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), on October 1, 1985, is $8 or more per thousand this section expires.

"(e) The additional taxes imposed by this section shall be added with the taxes imposed by Section 154.021 of this code and collected together as one tax."

"SECTION 8. Chapter 154, Tax Code, is amended by adding Section 154.6031 to read as follows:

"Sec. 154.6031. ALLOCATION OF ADDITIONAL TAX. (a) The revenue received from the collection of the additional taxes imposed under Section 154.0211 of this code, without deduction for the enforcement fund, is allocated as follows:

"(1) the first 50 cents per 1,000 cigarettes to the cancer resource fund for the fiscal year ending August 31, 1986, until $5,664,619 has been allocated to the cancer resource fund from this source and for the fiscal year ending August 31, 1987, until $3,087,133 has been allocated to the cancer resource fund from this source;

"(2) after the allocation under Subdivision (1) of this subsection has been made, the amount required to be allocated under Subdivision (b) of this section to the indigent health care assistance fund;

"(3) after the allocations made under Subdivisions (1) and (2) of this section have been made, the amount required to be allocated under Subsection (c) of this section to the local parks, recreation, and open space fund; and

"(4) the remainder, if any, to the general revenue fund.

"(b) For the fiscal year ending August 31, 1986, the amount of cigarette tax revenue derived from the rates under Section 154.0211 of this code after the allocation required by Subdivision (1) of Subsection (a) of this section is allocated

to the indigent health care assistance fund until $34,620,000 has been allocated to that fund from this source, and for the fiscal year ending August 31, 1987, the amount of cigarette tax revenue derived from the rates under Section 154.0211 of this code after the allocation under Subdivision (1) of Subsection (a) of this section is allocated to the indigent health care assistance fund until $36,650,000 has been allocated to that fund from this source.

"(c) If the allocation made in Section 154.603(b)(2) of this code to the Texas home port trust fund becomes effective, the amount of cigarette tax revenue derived from the rates under Section 154.0211 of this code after the allocation required by Subdivision (2) of Subsection (a) of this section is allocated only during the fiscal year ending August 31, 1987, to the local parks, recreation, and open space fund until a total of $8 million has been allocated to that fund under this subsection.

"(d) This section expires August 31, 1987."

(2) Strike Subsection (a) of Section 11 and substitute a new Subsection (a) to read as follows:

"(a) Subject to **H.B. 1280** of the 69th Legislature, Regular Session, 1985 (relating to the repeal of the "blue law" and to certain employment practices), becoming law, for the fiscal year ending August 31, 1986, $13,400,000 shall be transferred from the general revenue fund to the indigent health care assistance fund, for the fiscal year ending August 31, 1987, $23,600,000 is transferred from the general revenue fund to the indigent health care assistance fund, and for the fiscal year ending August 31, 1986, $1 million, and for the fiscal year ending August 31, 1987, $2 million, is transferred from the general revenue fund to the cancer resource fund."

(3) Strike Section 12 and substitute the following:

"SECTION 12. (a) There is appropriated to the Texas Cancer Council $6,664,619 for the fiscal year ending August 31, 1986, and $5,087,133 for the fiscal year ending August 31, 1987, from the cancer resource fund for the purposes of Chapter 5, Acts of the 69th Legislature, Regular Session, 1985 (Article 4477-41, Vernon's Texas Civil Statutes), and Article 4447x, Revised Statutes. The payment of fringe benefits for staff employed by state agencies or state-supported institutions of higher education are included in these appropriations.

"(b) There is appropriated to the Texas Department of Health from the indigent health care assistance fund:

"(1) $10,770,000 for the fiscal year ending August 31, 1986, and $15,470,000 for the fiscal year ending August 31, 1987, for the perinatal program;

"(2) $5 million for each fiscal year of the biennium ending August 31, 1987, for the women, infants, and children program;

"(3) $6,500,000 for the fiscal year ending August 31, 1986, and $12 million for the fiscal year ending August 31, 1987, for the primary care program;

"(4) contingent on **H.B. No. 1963** of the 69th Legislature, Regular Session, 1985, or any other bill of that session that requires the department to establish hospital transfer policies becoming law, $50,000 for the fiscal year ending August 31, 1986, and $30,000 for the fiscal year ending August 31, 1987, to implement and enforce patient transfer policies;

"(5) contingent on **H.B. No. 2091** or **S.B. No. 692** of the 69th Legislature, Regular Session, 1985, or any other bill of that session that authorizes the department to collect hospital discharge and uncompensated care data becoming law, $200,000 for the fiscal year ending August 31, 1986, and $250,000 for the fiscal year ending August 31, 1987, to collect hospital discharge data and data on uncompensated care provided by hospitals; and

"(6) for the fiscal year ending August 31, 1987, the unexpended balance from the previous year's appropriation under each subdivision of this subsection for the same purpose.

"(c) There is appropriated to the Texas Department of Human Resources from the indigent health care assistance fund:

"(1) $18 million for each fiscal year of the biennium ending August 31, 1987, to provide Medicaid coverage for the medically needy program;

"(2) $500,000 for the fiscal year ending August 31, 1986, and $2,500,000 for the fiscal year ending August 31, 1987, for the state's match to counties for providing indigent care;

"(3) $6 million for each fiscal year of the biennium ending August 31, 1987, to provide assistance for hospitals providing a disproportionate share of indigent health care;

"(4) $1 million for each fiscal year of the biennium ending August 31, 1987, to implement a computerized integrated eligibility services program in conjunction with the Texas Department of Health; and

"(5) for the fiscal year ending August 31, 1987, the unexpended balance from the previous year's appropriation under each subdivision of this subsection for the same purpose.

"(d) During January 1986, the comptroller shall estimate the amount of revenue that will be credited to the indigent health care assistance fund during the fiscal year ending August 31, 1986. If the amount of the estimate is less than $48,020,000, the amount of each appropriation for the fiscal year ending August 31, 1986, under Subsections (b) and (c) of this section shall be paid as follows:

"(1) all of the appropriation made by Subsection (c)(2) of this section shall be paid;

"(2) $7,500,000 of the amount appropriated under Subsection (c)(1) of this section shall be paid;

"(3) $3 million of the amount appropriated under Subsection (b)(1) of this section shall be paid;

"(4) $1 million of the amount appropriated under Subsection (b)(3) of this section shall be paid;

"(5) $1 million of the amount appropriated under Subsection (b)(2) of this section shall be paid;

"(6) $250,000 of the amount appropriated under Subsection (c)(4) of this section shall be paid;

"(7) all of the amount appropriated under Subsection (b)(4) of this section shall be paid;

"(8) $100,000 of the amount appropriated under Subsection (b)(5) of this section shall be paid; and

"(9) if further funds are available, the amounts appropriated under Subsections (c)(4) and (b)(5) of this section, in that order, shall be fully paid and, thereafter, the remaining appropriations under this section not fully paid shall be proportionally paid.

"(e) During September 1986, the comptroller shall estimate the amount of revenue that will be credited to the indigent health care assistance fund during the fiscal year ending August 31, 1987. If the amount of the estimate is less than $60,250,000, the amount of each appropriation made under Subsections (b) and (c) of this section shall be paid as follows:

"(1) all of the appropriation made by Subsection (c)(2) of this section shall be paid;

"(2) $7,500,000 of the amount appropriated under Subsection (c)(1) of this section shall be paid;

"(3) $7,420,000 of the amount appropriated under Subsection (b)(1) of this section shall be paid;

"(4) $2,500,000 of the amount appropriated under Subsection (b)(3) of this section shall be paid;

"(5) $3 million of the amount appropriated under Subsection (b)(2) of this section shall be paid;

"(6) $500,000 of the amount appropriated under Subsection (c)(4) of this section shall be paid;

"(7) all of the amount appropriated under Subsection (b)(4) of this section shall be paid;

"(8) $150,000 of the amount appropriated under Subsection (b)(5) of this section shall be paid; and

"(9) if further funds are available, the amounts appropriated under Subsections (c)(4) and (b)(5) of this section, in that order, shall be fully paid and thereafter the remaining appropriations under this section not fully paid shall be proportionally paid.

"(f) On August 31, 1987, all unencumbered money credited to the cancer resource fund or to the indigent health care assistance fund is transferred to the general revenue fund."

(4) Strike Subsection (c) of Section 13 and substitute the following:

"(c) Sections 7-10 and Section 12 of this Act take effect October 1, 1985. Section 11 of this Act takes effect September 1, 1985."

The amendment was read and was adopted.

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 1843** by striking all below the enacting clause and substitute in lieu thereof the following:

SECTION 1. The Indigent Health Care and Treatment Act is adopted to read as follows:

TITLE 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This Act may be cited as the Indigent Health Care and Treatment Act.

Sec. 1.02. DEFINITIONS. In this Act:

(1) "AFDC" means the Aid to Families with Dependent Children program administered by the Texas Department of Human Resources under Chapter 31, Human Resources Code.

(2) "Department" means the Texas Department of Human Resources.

(3) "Eligible resident" means a person who meets the income and resources requirements established by this Act or by the governmental entity, public hospital, or hospital district in whose jurisdiction the person resides.

(4) "Emergency services" has the meaning assigned by Chapter 495, Acts of the 64th Legislature, Regular Session, 1975 (Article 4438a, Vernon's Texas Civil Statutes).

(5) "General revenue levy" means the property taxes imposed by a county that are not dedicated to the construction and maintenance of farm-to-market roads or to flood control under Article VIII, Section 1-a, of the Texas Constitution, or dedicated to the further maintenance of the public roads under Article VIII, Section 9, of the Texas Constitution.

(6) "Governmental entity" includes a county, city, town, hospital authority, or other political subdivision of the state, but does not include a hospital district.

(7) "Hospital district" means a hospital district created under the authority of Article IX, Sections 4-11, of the Texas Constitution.

(8) "Mandated provider" means a provider of health care services selected by a county, public hospital, or hospital district that agrees to provide health care services to eligible residents.

(9) "Medicaid" means the medical assistance program administered by the Texas Department of Human Resources under Chapter 32, Human Resources Code.

(10) "Public hospital" means a hospital owned, operated, or leased by a governmental entity.

Sec. 1.03. RESIDENCY. (a) For purposes of this Act, a person is presumed to be a resident of the governmental entity in which the person's home, or fixed place of habitation to which the person intends to return after a temporary absence, is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.

(b) If a person does not have a residence, the person is a resident of the governmental entity or hospital district in which the person intends to reside.

(c) Evidence of intent to reside may include:

(1) mail addressed to the person or to the person's spouse or children if the spouse or children live with the person;

(2) voting records;

(3) automobile registration;

(4) Texas driver's license or other official identification;

(5) enrollment of children in a public or private school;

(6) payment of property tax; and

(7) any other relevant evidence.

(d) A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residency solely to obtain health care assistance.

(e) The burden of proving intent to reside is on the person requesting assistance.

(f) For purposes of this Act, a person who is an inmate, patient, or resident of a state or federal school or institution operated by the Texas Department of Corrections, Texas Department of Mental Health and Mental Retardation, Texas Youth Commission, Texas School for the Blind, Texas School for the Deaf, or any other state or federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government.

Sec. 1.04. RESIDENCY DISPUTE. (a) If a governmental entity or a hospital district and a provider of assistance cannot agree on a person's residency, the governmental entity, hospital district, or provider of assistance may submit the matter to the attorney general.

(b) The governmental entity or hospital district and the provider of assistance shall submit all relevant information to the attorney general.

(c) If the attorney general determines that another governmental entity or hospital district may be involved in the dispute, the attorney general shall notify the governmental entity or hospital district and allow the governmental entity or hospital district to respond.

(d) From the information submitted, the attorney general shall determine the person's residency and shall notify each governmental entity or hospital district and the provider of assistance of the decision and the reasons for the decision.

(e) If a governmental entity, hospital district, or the provider of assistance does not agree with the attorney general's decision, the governmental entity, hospital district, or provider of assistance may file an appeal with the attorney general. The appeal must be filed not later than the 30th day after the date on which the governmental entity, hospital district, or provider received notice of the decision.

(f) Not later than the 21st day after the date on which the appeal is filed, the attorney general shall issue a final decision. This decision is binding on all parties.

Sec. 1.05. CONTRIBUTION TOWARD COST OF TREATMENT. (a) A county, public hospital, or hospital district may request an eligible resident receiving

health care assistance under this Act to contribute a nominal amount toward the cost of the assistance.

(b) If an eligible resident is unable to contribute or refuses to contribute, the county, public hospital, or hospital district may not deny or limit assistance to the resident.

Sec. 1.06. DUTY OF DEPARTMENT. (a) The department shall establish eligibility standards and application, documentation, and verification procedures for counties to use in determining eligibility under this Act that are in accordance with the standards and procedures used by the department to determine eligibility in the AFDC-Medicaid program. The department shall also define the services and establish the payment standards for the categories of services listed in Section 3.01(a) of this Act in accordance with department rules relating to the AFDC-Medicaid program.

(b) To the extent necessary to provide efficient administration at the county level, the department may simplify the AFDC-Medicaid standards and procedures used by the department. In establishing simplified standards and procedures for county administration, the department may not adopt a standard or procedure that is more restrictive than the AFDC-Medicaid standards or procedures. The department must ensure that each person who meets the basic income and resources requirements for AFDC payments but who is categorically ineligible for AFDC will be eligible for assistance under Title 2 of this Act.

(c) Department rules relating to the application and documentation procedures must require each applicant to provide at least the following information:

(1) the applicant's full name and address;

(2) the applicant's social security number, if available;

(3) the size of the applicant's household, excluding persons receiving AFDC or SSI benefits;

(4) the applicant's county of residence;

(5) the existence of insurance coverage or other hospital or health care benefits for which the applicant is eligible;

(6) any transfer of title to real property that the applicant has made in the previous 24 months;

(7) the applicant's annual household income, excluding the income of any household member receiving AFDC or SSI benefits; and

(8) the applicant's liquid assets and the equity value of the applicant's car and real property.

(d) Department rules for determining eligibility must provide that:

(1) a county may not consider the value of the applicant's homestead;

(2) a county must consider the equity value of a car that is in excess of the amount exempted under department guidelines as a resource;

(3) a county must subtract the work-related and child care expense allowance allowed under department guidelines; and

(4) a county must consider as a resource real property other than a homestead and must count that property in determining eligibility.

(e) Notwithstanding Subsection (d)(4) of this section, a county may disregard the applicant's real property if the applicant agrees to a legally enforceable obligation to reimburse the county for all or part of the benefits received under this title. The county and the applicant may negotiate the terms of the obligation.

(f) Department rules shall also provide that if an applicant has within the preceding 24 months transferred title to real property for less than market value to become eligible for assistance under this title, the county may not credit toward eligibility for state assistance an expenditure for that applicant made during a two-year period beginning on the date on which the property was transferred.

(g) The department shall notify each county and public hospital of any change to AFDC or Medicaid guidelines that affect the provision of services under this Act and shall amend the rules adopted under this Act to reflect the changes made in the AFDC or Medicaid programs.

(h) A county may use the standards and procedures established by the department or it may use less restrictive standards and procedures. However, expenditures for a resident may be counted toward eligibility for state assistance only as provided by Section 5.01 of this Act.

Sec. 1.07. DUTY OF TEXAS DEPARTMENT OF HEALTH. (a) The Texas Department of Health shall establish uniform reporting requirements for counties and governmental entities that own, operate, or lease public hospitals providing assistance under this Act.

(b) The requirements shall include information relating to:

(1) expenditures for and nature of hospital and health care provided to eligible residents;

(2) eligibility standards and procedures established by counties and governmental entities that own, operate, or lease public hospitals; and

(3) relevant characteristics of eligible residents.

TITLE 2. COUNTY RESPONSIBILITY FOR PERSONS NOT RESIDING WITHIN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

SUBTITLE A. ELIGIBILITY FOR SERVICES

Sec. 2.01. APPLICATION OF TITLE. This title applies to health care services and assistance provided to a person who does not reside within the area that a public hospital or hospital district has a legal obligation to serve.

Sec. 2.02. GENERAL PROVISIONS. (a) Each county shall provide health care assistance as prescribed by this title to each eligible resident of that county who does not reside within the area that a public hospital or hospital district has a legal obligation to serve.

(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.

Sec. 2.03. GENERAL ELIGIBILITY PROVISIONS. (a) A person is eligible for assistance under this title if:

(1) the person does not reside within the area that a public hospital or hospital district has a legal obligation to serve;

(2) the person meets the basic income and resources requirements established by the department under Section 1.06 of this Act and in effect at the time assistance is requested; and

(3) no other adequate source of payment exists.

(b) A county may use a less restrictive standard of eligibility for residents than prescribed by Subsection (a) of this section, but expenditures for a resident may be counted toward eligibility for state assistance under Subtitle D of this title only as provided by Section 5.01 of this Act.

(c) A county may contract with the department to perform eligibility determination services.

Sec. 2.04. GENERAL APPLICATION PROVISIONS. (a) Each county shall adopt an application procedure in accordance with this subtitle.

(b) A county may use the application, documentation, and verification procedures established by the department under Section 1.06 of this Act or may use a less restrictive application, documentation, or verification procedure. However, expenditures for a resident may be counted toward eligibility for state assistance under Subtitle D of this title only as provided by Section 5.01 of this Act.

(c) Not later than the beginning of a county's fiscal year, the county shall specify the procedures it will use during that fiscal year to verify eligibility and the

documentation required to support a request for assistance, and shall make a reasonable effort to notify the public of the application procedures.

(d) Each county shall furnish each applicant with written application forms.

(e) On request of an applicant, a county shall assist an applicant in filling out forms and completing the application process. Each county shall inform each applicant of the availability of assistance.

(f) Each county shall require each applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(g) Each county shall explain to the applicant that if the application is approved, the applicant must report to the county, not later than the 14th day after the date on which the change occurs, any change in income or resources that might affect the applicant's eligibility. Each county shall explain the possible penalties for failure to report a change.

(h) A county shall accept and review each application and shall accept or deny each application not later than the 14th day after the date on which the county received the completed application form.

(i) Each county shall provide a process for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(j) A county shall provide each applicant written notification of the county's decision. If the county denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(k) Each county shall maintain the records relating to each application for at least three years after the date on which the application was submitted.

(l) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

Sec. 2.05. REVIEW OF ELIGIBILITY. Each county must review at least once every six months the eligibility of each resident for whom an application for assistance has been granted and who has received assistance under this Act.

Sec. 2.06. CHANGE IN ELIGIBILITY STATUS. (a) Each eligible resident must report any change in income or resources status that might affect the resident's eligibility not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources status as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute.

SUBTITLE B. HEALTH CARE SERVICES

Sec. 3.01. MANDATORY AND PERMISSIVE SERVICES. (a) Each county shall provide the following health care services in accordance with department rules adopted under Section 1.06 of this Act:

(1) inpatient and outpatient hospital services as limited by this title;

(2) rural health clinics;

(3) laboratory and X-ray services;

(4) family planning services;

(5) physician services;

(6) payment for not more than three prescription drugs per month; and

(7) skilled nursing facility services as limited by this title regardless of the patient's age.

(b) A county may provide additional services, but may not credit the assistance toward eligibility for state assistance.

Sec. 3.02. PROVISION OF HEALTH CARE SERVICES. (a) A county may arrange to provide health care services through a local health department, a publicly owned facility, a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) A county may affiliate with other governmental entities or with a public hospital or hospital district to provide regional administration and delivery of health care services.

Sec. 3.03. MANDATED PROVIDER. A county may select one or more providers of health care services and, except in an emergency, when medically inappropriate, or when care is not available, require eligible county residents to obtain care from a mandated provider.

Sec. 3.04. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) If a county has selected a mandated provider, the county may require the mandated provider to obtain approval from the county before providing nonemergency health care services to an eligible resident of that county.

(b) If a county has not selected a mandated provider, a provider of nonemergency health care services shall inform the county of residence of any services provided to a patient who resides in that county and who is eligible for assistance under this title as provided by Subsection (c) of this section.

(c) If a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects may be eligible for assistance under this title, as soon as possible after determining the patient's county of residence, the provider must notify the patient's county of residence by telephone that health care services have been or will be provided to the patient. The provider must also notify the patient's county of residence by mail postmarked not later than the third working day after determining the patient's county of residence.

(d) If the provider knows that the patient's county of residence has selected a mandated provider or if, after contacting the patient's county of residence, that county requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(e) Not later than the 14th day after the patient's county of residence receives sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within the 14-day period, the patient is considered to be eligible.

(f) The county shall notify the provider of its decision.

(g) If a provider who delivers nonemergency health care services to a patient who is eligible for assistance under this title fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Sec. 3.05. PROVISION OF EMERGENCY SERVICES. (a) If a patient who is eligible for assistance under this title requires emergency services from a nonmandated provider, the provider must notify the patient's county of residence as provided by this section.

(b) If a provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this title, as soon as possible after determining the patient's county of residence, the provider must notify that county by telephone that emergency services have been or will be provided to the patient.

(c) The provider must also notify the patient's county of residence by mail postmarked not later than the third working day after determining the patient's county of residence.

(d) The provider shall attempt to determine the patient's county of residence at the time the patient first receives services.

(e) The provider, the patient, and the patient's family shall cooperate with the county of which the patient is presumed to be a resident in determining if the patient actually is an eligible resident of that county.

(f) Not later than the 14th day after the patient's county of residence receives notification and any available information to determine eligibility, the county shall

determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within the 14-day period, the patient is considered to be eligible.

(g) The county shall notify the provider of its decision.

(h) If the county and the provider disagree on the patient's residency, the county or the provider may submit the matter to the attorney general as provided by Section 1.04 of this Act.

(i) If a provider who delivers emergency services to a patient who is eligible for assistance under this title fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

SUBTITLE C. PAYMENT OF SERVICES

Sec. 4.01. GENERAL PROVISIONS. (a) To the extent prescribed by this Act, a county is liable for health care services provided under this title by any provider, including a public hospital or hospital district, to an eligible resident of that county who does not reside within the area that a public hospital or hospital district has a legal obligation to serve.

(b) A county is not liable for payment for health care services provided by any provider, including a public hospital or hospital district, to a resident of that county if the resident resides within an area that a public hospital or hospital district has a legal obligation to serve.

(c) A county is not liable for health care services provided in a hospital to an eligible resident of that county who does not reside within the area that a public hospital or hospital district has a legal obligation to serve if the hospital providing services has a Hill-Burton or state-mandated obligation to provide free services and the hospital is considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(d) To the extent prescribed by this Act, if another source of payment does not adequately cover a health care service a county provides to an eligible resident of that county, who does not reside within the area that a public hospital or hospital district has a legal obligation to serve, the county is responsible for paying for or for providing the health care service for which other payment is not available.

Sec. 4.02. PAYMENT OF MANDATORY HEALTH CARE SERVICES. (a) A county is not liable for the cost of a mandatory health care service that is in excess of the payment standards for that service established by the department under Section 1.06 of this Act.

(b) A county may contract with a provider of assistance to provide a health care service at a rate below the payment standard set by the department.

Sec. 4.03. LIMITATION. (a) County liability for health care services provided by all providers of assistance, including hospitals and skilled nursing facilities, to an eligible resident of that county who does not reside within the area that a public hospital or hospital district has a legal obligation to serve is limited to a maximum total payment of $30,000 for all services provided to that resident during the county's fiscal year.

(b) If a county provides hospital or skilled nursing facility services to an eligible resident of that county who does not reside within the area that a public hospital or hospital district has a legal obligation to serve, the county's liability is limited to payment for a total of 30 days of hospitalization, or treatment in a skilled nursing facility, or both, during the county's fiscal year or a maximum total payment of $30,000 for all services provided to that eligible resident during that fiscal year, whichever occurs first.

SUBTITLE D. STATE ASSISTANCE

Sec. 5.01. DETERMINATION OF ELIGIBILITY FOR PURPOSES OF STATE ASSISTANCE. (a) A county must comply with the application, documentation, and verification procedures established by the department under

Section 1.06 of this Act to credit an expenditure made to assist an eligible resident toward eligibility for state assistance under this subtitle. A county may use a different application, documentation, or verification procedure but may not credit an expenditure made as a result of the different procedure toward eligibility for state assistance.

(b) The county may not credit an expenditure for an applicant toward eligibility for state assistance if the applicant does not meet the eligibility standards established by the department under Section 1.06 of this Act.

Sec. 5.02. COUNTY ELIGIBILITY. (a) The department may distribute funds as provided by this subtitle to eligible counties to assist the counties in providing mandatory health care services to eligible residents of that county who do not reside within the area that a public hospital or hospital district has a legal obligation to serve.

(b) Except as provided by Subsection (c) of this section, to be eligible for state assistance, a county must:

(1) expend in a fiscal year at least 10 percent of the county general revenue levy for that year to provide mandatory health care services to eligible residents of that county who do not reside within the area that a public hospital or hospital district has a legal obligation to serve and who qualify for assistance under Section 5.01 of this Act; and

(2) notify the department, not later than the seventh day after the date on which the county has reached the expenditure level, that the county has expended at least eight percent of the applicable county general revenue levy for that year to provide mandatory health care services to eligible residents of that county who do not reside within the area that a public hospital or hospital district has a legal obligation to serve and who qualify for assistance under Section 5.01 of this Act.

(c) If a hospital district is located in part but not all of a county, that county's appraisal district shall determine the taxable value of the property located inside the county but outside the hospital district. In determining eligibility for state assistance, that county shall consider only the county general revenue levy resulting from the property located outside the hospital district. A county is eligible for state assistance if the county expends at least 10 percent of the county general revenue levy for that year resulting from the property located outside the hospital district to provide mandatory health care services to eligible residents of that county who do not reside within the area that a public hospital or hospital district has a legal obligation to serve and who qualify for assistance under Section 5.01 of this Act, and if the county complies with the other requirements of this subtitle.

(d) If a county anticipates that it will reach the 10 percent expenditure level, the county must notify the department as soon as possible before the date on which the county anticipates that it will reach the level.

(e) The county shall give the department all necessary information so that the department can determine if the county has met the requirements of Subsection (b) or (c) of this section.

(f) If the department determines that the county has met the requirements of Subsection (b) or (c) of this section and is eligible for assistance, the department shall distribute funds appropriated to the department from the indigent health care assistance fund or any other available fund to the county to assist the county in providing mandatory health care services to eligible residents of that county who do not reside within the area that a public hospital or hospital district has a legal obligation to serve and who qualify for assistance under Section 5.01 of this Act.

(g) State funds shall be equal to 80 percent of the actual payment for health care services for eligible residents of that county who do not reside within the area that a public hospital or hospital district has a legal obligation to serve during the remainder of the year after the 10 percent expenditure level has been reached.

(h) If the department fails to provide assistance to an eligible county as prescribed by Subsections (f) and (g) of this section, the county is not liable for payments for health care services provided to eligible residents after the county reaches the 10 percent expenditure level.

Sec. 5.03. DUTY OF STATE PROPERTY TAX BOARD. The State Property Tax Board shall give the department information relating to the taxable value of property taxable by each county and each county's applicable general revenue tax levy for the relevant period.

Sec. 5.04. COUNTY REPORTING REQUIREMENTS. (a) The department shall establish reporting requirements for each county seeking state assistance and establish procedures necessary to determine if the county is eligible for state assistance.

(b) The department shall establish requirements relating to:

(1) documentation required to verify the eligibility of residents to whom the county provided assistance; and

(2) county expenditures for mandatory health care services.

(c) The department may audit county records to determine if the county is eligible for state assistance.

TITLE 3. PERSONS WHO RESIDE WITHIN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

SUBTITLE A. ELIGIBILITY FOR SERVICES

Sec. 10.01. APPLICATION OF TITLE. (a) This title applies to health care services and assistance provided to a person who resides within the area that a public hospital or hospital district has a legal obligation to serve.

(b) This title does not apply to a hospital authority that is located wholly within a hospital district or wholly within the area that a public hospital not affiliated with any authority has a legal obligation to serve.

(c) If a hospital authority is located wholly within a hospital district, that hospital district is responsible for the care of the residents as provided by the Texas Constitution and the statute creating the district.

(d) If a hospital authority is located wholly within an area that a public hospital not affiliated with any authority has a legal obligation to serve, that public hospital is responsible for the care of the residents as provided by this Act.

Sec. 10.02. GENERAL ELIGIBILITY PROVISIONS. (a) Each public hospital shall provide health care assistance as prescribed by this title to each eligible resident of the area that the hospital has a legal obligation to serve. Each governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to allow the hospital to provide the required health care assistance as prescribed by Section 12.03 of this Act.

(b) A person is eligible for assistance under this title if the person resides within the area that a public hospital has a legal obligation to serve and:

(1) meets the basic income and resources requirements established by the department under Section 1.06 of this Act and in effect at the time the assistance is requested; or

(2) meets a less restrictive income and resources standard adopted by the public hospital serving the area in which the person resides.

(c) If a public hospital used an income and resources standard during the operating year that ended before January 1, 1985, that was less restrictive than the income and resources requirements established by the department under Section 1.06 of this Act, the public hospital shall adopt that standard to determine eligibility under this title.

(d) If a public hospital did not use an income and resources standard during the operating year that ended before January 1, 1985, but had a Hill-Burton obligation during part of that year, the hospital shall adopt the standard the hospital used to meet the Hill-Burton obligation to determine eligibility under this title.

(e) A public hospital established after the effective date of this Act shall provide health care services to each resident who meets the income and resources requirements established by the department under Section 1.06 of this Act or the public hospital may adopt a less restrictive income and resources standard.

(f) A public hospital may adopt a less restrictive income and resources standard at any time. If because of a change in the income and resources requirements established by the department under Section 1.06 of this Act the standard adopted by a hospital becomes stricter than the requirements established by the department, the hospital shall change its standard to at least comply with the requirements established by the department.

(g) A public hospital may contract with the department to perform eligibility determination services.

(h) This section does not apply to a hospital district.

Sec. 10.03. GENERAL APPLICATION PROCEDURES. (a) Each public hospital or hospital district shall adopt an application procedure in accordance with this subtitle.

(b) Not later than the beginning of a public hospital's or hospital district's operating year, the hospital or district shall specify the procedures it will use during the operating year to determine eligibility and the documentation required to support a request for assistance, and shall make a reasonable effort to notify the public of the procedures.

(c) Each public hospital or hospital district shall furnish each applicant with written application forms.

(d) On request of an applicant, a public hospital or hospital district shall assist an applicant in filling out forms and completing the application process. Each public hospital or hospital district shall inform each applicant of the availability of assistance.

(e) Each public hospital or hospital district shall require each applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(f) Each public hospital or hospital district shall explain to the applicant that if the application is approved, the applicant must report to the hospital or district any change in income or resources that might affect the applicant's eligibility not later than the 14th day after the date on which the change occurs. Each hospital or district shall explain the possible penalties for failure to report a change.

(g) Each public hospital or hospital district shall accept and review each application and shall accept or deny each application not later than the 14th day after the date on which the hospital or district received the completed application.

(h) Each public hospital or hospital district shall provide a process for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(i) Each public hospital or hospital district shall provide each applicant written notification of the hospital's or district's decision. If the hospital or district denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(j) Each public hospital or hospital district shall maintain the records relating to each application for at least three years after the date on which the application was submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

SUBTITLE B. HEALTH CARE SERVICES

Sec. 11.01. MANDATORY AND PERMISSIVE SERVICES PROVIDED BY PUBLIC HOSPITAL. (a) Each public hospital shall provide the inpatient and outpatient hospital services a county is required to provide under Section 3.01(a)(1) of this Act.

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital may provide additional health care services.

(d) This section does not apply to a hospital district.

Sec. 11.02. SERVICES PROVIDED BY HOSPITAL DISTRICTS. A hospital district shall provide the health care services required under the Texas Constitution and the statute creating the district.

Sec. 11.03. PROVISION OF HEALTH CARE SERVICES. (a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) A public hospital or hospital district may affiliate with other public hospitals or hospital districts or with a governmental entity to provide regional administration and delivery of health care services.

Sec. 11.04. MANDATED PROVIDER. A public hospital may select one or more providers of health care services and, except in an emergency, when medically inappropriate, or when care is not available, require eligible residents to obtain care from a provider.

Sec. 11.05. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) If a public hospital has selected a mandated provider, the hospital may require the mandated provider to obtain approval from the hospital before providing nonemergency health care services to an eligible resident of the area that the hospital has a legal obligation to serve.

(b) If a public hospital has not selected a mandated provider, the provider of nonemergency health care assistance shall inform the hospital serving the area in which a patient eligible for assistance under this title resides of any nonemergency health care services provided to that patient as prescribed by Subsection (c) of this section.

(c) If a provider delivers or will deliver nonemergency health care services to a patient that the provider suspects might be eligible for assistance under this title, as soon as possible after determining that the patient resides within the area served by a public hospital, the provider must notify that hospital by telephone that health care services have been or will be provided to that patient. The provider must also notify the public hospital by mail postmarked not later than the third working day after determining that the patient resides within the area served by the hospital.

(d) If the provider knows that the public hospital serving the area in which the patient resides has selected a mandated provider or if, after contacting the hospital, the hospital requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to transfer the patient.

(e) Not later than the 14th day after the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance. If the hospital does not determine the patient's eligibility within the 14-day period, the patient is considered to be eligible.

(f) The public hospital shall notify the provider of its decision.

(g) If a provider who delivers nonemergency health care services to a patient who is eligible for assistance under this title fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

(h) This section does not apply to a hospital district.

Sec. 11.06. PROVISION OF EMERGENCY SERVICES. (a) If a patient who is eligible for assistance under this title requires emergency services from a

nonmandated provider, the provider must notify the public hospital serving the area in which the patient resides as provided by this section.

(b) If a provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this title, as soon as possible after determining that the patient resides within the area served by a public hospital, the provider must notify that hospital by telephone that emergency services have been or will be provided to that patient.

(c) The provider must also notify the public hospital by mail postmarked not later than the third working day after determining that the patient resides within the area served by the hospital.

(d) The provider shall attempt to determine if the patient resides within the area served by a public hospital at the time the patient first receives services.

(e) The provider, the patient, and the patient's family shall cooperate with the public hospital in determining if the patient is an eligible resident of the area served by the hospital.

(f) Not later than the 14th day after the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance. If the hospital does not determine the patient's eligibility within the 14-day period, the patient is considered to be eligible.

(g) The public hospital shall notify the provider of its decision.

(h) If the public hospital and the provider disagree on the patient's residency, the hospital or the provider may submit the matter to the attorney general as provided by Section 1.04 of this Act.

(i) If a provider who delivers emergency services to a patient who is eligible for assistance under this title fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

(j) If emergency services are usually and customarily available at a facility operated by a public hospital, that hospital is not liable for emergency services furnished to an eligible resident by another provider in the area the hospital has a legal obligation to serve.

(k) This section does not apply to a hospital district.

SUBTITLE C. PAYMENT OF SERVICES

Sec. 12.01. GENERAL PROVISIONS. (a) To the extent prescribed by this Act, a public hospital is liable for health care services provided under this title by any provider, including another public hospital, to an eligible resident of the area that the hospital has a legal obligation to serve.

(b) A hospital district is liable for health care services as provided by the Texas Constitution and the statute creating the district.

(c) A public hospital is not liable for health care services provided to a resident of an area that the hospital does not have a legal obligation to serve.

(d) A public hospital is not liable for health care services provided by another hospital to an eligible resident of the area that the public hospital has a legal obligation to serve if the hospital providing services has a Hill-Burton or state-mandated obligation to provide free services and the hospital is considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(e) A public hospital is the payor of last resort under this title and is not liable for payment or assistance to an eligible resident of the area that the public hospital has a legal obligation to serve if any other public or private source of payment is available.

(f) If another source of payment does not adequately cover a health care service a public hospital provides to an eligible resident of the area that the hospital has a legal obligation to serve, the hospital is responsible for paying for or for providing the health care service for which other payment is not available.

Sec. 12.02. PAYMENT RATES AND LIMITS. (a) The payment rates and limits prescribed by Sections 4.02 and 4.03 of this Act that relate to county services apply to inpatient and outpatient hospital services a public hospital is required to provide if the hospital is not able to provide the services or emergency services that are required and the services are provided elsewhere.

(b) This section does not apply to a hospital district.

Sec. 12.03. RESPONSIBILITY OF GOVERNMENTAL ENTITY. Each governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to the hospital to provide the health care assistance required by this Act. If a public hospital is owned, operated, or leased by a hospital authority, the governmental entity that created or authorized the creation of the authority shall provide sufficient funding to the public hospital or hospital authority to provide the health care assistance required by this Act.

SUBTITLE D. PROCEDURE TO CHANGE ELIGIBILITY STANDARDS OR SERVICES PROVIDED

Sec. 13.01. APPLICATION. This subtitle does not apply to a hospital district.

Sec. 13.02. PROCEDURE. (a) A public hospital may not change its eligibility standards to make the standards more restrictive and may not reduce the health care services it offers unless it complies with the requirements of this section.

(b) Not later than the 90th day before a change would take effect, the public hospital must publish notice of the proposed change in a newspaper of general circulation in the area served by the hospital and set a date for a public hearing on the change. The published notice must include the date, time, and place of the public meeting. This notice does not replace the notice required by the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(c) Not later than the 30th day before the date on which the change would take effect, the public hospital shall conduct a public meeting to discuss the change. The meeting shall be held at a convenient time in a convenient location within the area the hospital has a legal obligation to serve. Members of the general public may testify at the meeting.

(d) If, based on the public testimony and on other relevant information, the commissioners court, city council, or board of managers or other governing body of the hospital finds that the change would not have a detrimental impact on access to health care for the residents the hospital serves, the hospital may adopt the change.

(e) The commissioners court, city council, or board of managers or other governing body of the hospital must formally adopt the finding that the change does not have a detrimental impact on access to health care.

SUBTITLE E. TRANSFER OF OWNERSHIP OR CONTROL OF PUBLIC HOSPITAL

Sec. 14.01. EFFECT OF TRANSFER. Notwithstanding any other provision of law, if a public hospital owned, operated, or leased by a governmental entity is sold or leased to another person on or after January 1, 1985, the sale or lease of the public hospital does not affect the governmental entity's obligation to continue to serve residents who were eligible for assistance during the hospital's last full operating year that ended before January 1, 1985, or the obligation to provide the health care services the public hospital provided during that period.

TITLE 4. INDIGENT HEALTH CARE DISTRICTS

Sec. 21.01. RESPONSIBILITIES OF DISTRICT SAME AS COUNTY. (a) Except as provided by this section, the provisions of Title 2 of this Act relating to county responsibility for health care services also apply to indigent health care

districts, and an indigent health care district has the same rights and responsibilities under this Act as does a county.

(b) If a public hospital is located in an indigent health care district, or if at the time the district was created the hospital had a legal obligation to serve the residents of the district, the district shall assume that hospital's responsibility for providing services under this Act. The district shall, at a minimum, comply with the requirements of Subsection (a) of this section and provide any additional services the public hospital provided immediately before the district was created.

(c) An indigent health care district is not eligible for state assistance under Subtitle D of Title 2 of this Act.

Sec. 21.02. CONTINGENT ON CONSTITUTIONAL AMENDMENT. This title is contingent on the adoption by the voters of **S.J.R. 29**, 69th Legislature, Regular Session. If that amendment is not adopted by the voters, this title has no effect.

TITLE 5. INDIGENT HEALTH CARE ASSISTANCE FUND

Sec. 31.01. INDIGENT HEALTH CARE ASSISTANCE FUND CREATED. The indigent health care assistance fund is created in the state treasury.

Sec. 31.02. USES OF FUND. The indigent health care assistance fund may be appropriated for the following purposes only:

(1) for the payment of money to a county under Section 5.02 of this Act;

(2) for the provision of health care assistance to the indigent by public hospitals and hospital districts to be allocated as provided by law, and for reimbursement of providers who furnish a disproportionate amount of health care assistance to indigents;

(3) for the provision of health care assistance through any program of medical or health care assistance administered by the department, including social security programs for children, handicapped or disabled persons, and the aged;

(4) for the provision of maternal and infant health improvement services and perinatal services for low income individuals under the Texas Maternal and Infant Health Improvement Act or under any other law providing for those health care services;

(5) for the provision of primary health care services for low income individuals under the Texas Primary Health Care Services Act or under any other law providing for those health care services;

(6) for cancer prevention, cancer treatment, and medical care for cancer victims;

(7) for coordinating, implementing, and administering health care programs for low income or indigent individuals; and

(8) for any other health care assistance, preventive health, or nutrition program for low income or indigent individuals authorized by law.

SECTION 2. Section 26.07, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) Notwithstanding Subsection (a) of this section, if the governing body of a taxing unit other than a school district increases its tax rate to provide health care services that the governing body is required to provide to its residents under the Indigent Health Care and Treatment Act, the adopted tax rate that allows voters to seek to reduce the tax rate under this section must exceed the rate calculated under Section 26.04 of this code by eight percent plus the percentage of increase necessary to impose taxes in an amount necessary to provide those health care services.

SECTION 3. Article 2351, Revised Statutes, is amended to read as follows:

Art. 2351. CERTAIN POWERS SPECIFIED. Each commissioners court shall:

1. Lay off their respective counties into precincts as provided by the Texas Constitution[~~, not less than four, and not more than eight,~~] for the election of

justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held[~~; and shall establish justices precincts and justices courts for the unorganized counties as provided by law~~].

2. Establish public ferries whenever the public interest may require.

3. Lay out and establish, change and discontinue public roads and highways.

4. Build bridges and keep them in repair.

5. Appoint road overseers and apportion hands.

6. Exercise general control over all roads, highways, ferries and bridges in their counties.

7. Provide and keep in repair court houses, jails and all necessary public buildings.

8. Provide for the protection, preservation and disposition of all lands granted to the county for education or schools.

9. Provide seals required by law for the district and county courts.

10. Audit and settle all accounts against the county and direct their payment.

11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. A county is obligated to provide health care assistance to eligible residents only to the extent prescribed by the Indigent Health Care and Treatment Act. [~~By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year.~~]

12. Provide for the burial of paupers.

13. Punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.

14. Issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed by such court and to enforce its jurisdiction.

15. Said court shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law.

16. Said Court shall have the authority to use county road machinery and funds from the General Fund or Road and Bridge Funds in cleaning streams and in aiding flood control when such improvements are deemed to be of aid to the county in the maintenance and the building of county roads, in counties having a population of from nineteen thousand, eight hundred and fifty (19,850) to nineteen thousand, eight hundred and ninety-five (19,895) according to the last Federal Census.

17. a. The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is hereby empowered to create a revolving fund or funds and to make appropriations thereto out of the general revenue of such county; and such revolving fund shall be used by such county only in cooperation with the United States Department of Agriculture to aid and assist in carrying out the purposes and provisions of an Act of Congress of the United States pertaining to the distribution of commodities to persons in need of assistance, under the direction of the United States Department of Agriculture; provided, however, that the county shall have on hand at all times either the moneys appropriated to such revolving fund or funds or the equivalent thereof in stamps issued by the United States Department of Agriculture under the Food and/or Cotton Stamp Plan, which stamps are convertible into cash at any time.

b. In such counties of this State exercising the powers herein granted, an issuing officer shall be appointed to carry out the provisions of this Act and to administer the funds herein appropriated. Such issuing officer shall be a citizen of

the State of Texas and appointed by the County Judge of such County subject to the approval of the Commissioners Court thereof. He shall be required to furnish a good and sufficient surety bond in such amount and upon such terms and conditions as may be required by the Commissioners Court and the United States Department of Agriculture. Such issuing officer shall receive a salary, to be paid out of the general fund or any other fund of the county, except constitutional funds, not otherwise appropriated, not to exceed Two Hundred Dollars ($200) per month, and may appoint such cashiers and other assistants as may be authorized by such Court. The premiums of all bonds which may be required of such issuing officer, cashiers or other assistants, shall be paid by the Commissioners Court out of any available funds therefor belonging to such county.

c. Provided however the powers herein granted to such counties may be exercised by two (2) or more counties in conjunction with each other and in cooperation with the United States Department of Agriculture. And when such powers are exercised by two (2) or more counties jointly, the County Judges of such counties shall appoint the issuing officer, fix such appointee's bond and to do all other things necessary to cooperate with the United States Department of Agriculture in the same and like manner as is herein granted to any one county of this State.

d. Provided that such Commissioners Courts of such counties may cooperate with any incorporated city or town within such county or counties on such conditions and requirements as may be promulgated by such Commissioners Court or Courts.

e. Whenever any county herein authorized to create such a revolving fund ceases to participate therein the issuing officer appointed under the provisions hereof shall forthwith reduce all stamps to their equivalent in money and return such moneys then on hand to the fund from which same was originally appropriated and render a full account of his administration thereof to the Commissioners Court or Courts as the case may be.

18 (a) The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is empowered in all cases where said county has heretofore acquired, or may hereafter acquire, land for an airport through purchase or gift from any person or source whatever, including the Federal Government, or any agency thereof, to lease said land and/or the facilities thereof, or any part thereof to any person or corporation upon such terms as the Commissioners Court shall deem advisable for airport purposes, or other purposes, provided any such lease is not inhibited by the terms of the grant to such county. Said counties through such Commissioners Courts are also hereby expressly authorized and empowered to contract with reference to oil, gas or other minerals or natural resources which may be vested in said counties by virtue of the ownership of such airports and to execute and deliver to any person upon such conditions and for such consideration, including oil payments, gas payments, over-riding royalties, etc. as the Commissioners Court may deem advisable, mineral deeds or mineral leases of all or any part of said minerals, or the rights thereto, which are vested in the county and to generally contract for the exploration and development of the minerals underlying said land or any part thereof.

(b) The proceeds from the sale of any minerals or mineral rights, or the consideration for the execution of any mineral leases, including cash bonuses, delay rentals and royalties, need not be devoted to the maintenance, upkeep, improvement and operation of such airport, but may be expended by the Commissioners Court for any lawful purpose.

(c) The proceeds received, or to be received from any person from the lease of the surface of said land, or from the lease of the facilities thereof, or any part thereof, for purposes other than airport purposes, or for purposes other than those

relating to the operation of an airport, may likewise be expended by the Commissioners Court for any lawful purpose.

(d) The proceeds received, or to be received, from any person for any lease of the surface of said land, or for the lease of the facilities thereof, or any part thereof, for airport purposes, or for purposes related to the operation of an airport, shall be devoted, first, to the maintenance, upkeep, improvement and operation of such airport and the facilities, structures and improvements thereof, but any surplus remaining at the close of any fiscal year of operation may be expended by such Commissioners Court for any lawful purpose.

(e) The proceeds received, or to be received, from any charges for the use of said airport for airport purposes shall be devoted, first, to the maintenance, upkeep, improvement and operation of such airport and the facilities, structures and improvements thereof, but any surplus remaining at the close of the fiscal year of operation may be expended by the Commissioners Court for any lawful purpose.

19 (a) The Commissioners Court of each county of this State, in addition to the powers already conferred upon it by law, is expressly authorized and empowered to contract with the United States Government, or with any agency thereof, and particularly with the Federal Works Administrator, the Housing and Home Finance Administrator, and/or the National Housing Administrator, or their successor or successors, for the acquisition of any land, or interest in land, in such county, owned by the United States Government, or any agency thereof, and for the acquisition of any temporary housing on land which the United States Government, or any agency thereof, may own or control; and each such county in this State is authorized and empowered to acquire by purchase, gift or otherwise, any such land and any such housing from the United States Government, or any agency thereof, and to own and operate such land and housing.

(b) Each Commissioners Court in this State is authorized and empowered to adopt a resolution or order requesting the transfer to said county of any such land or housing, or interest therein, which the United States Government, or any agency thereof, is now, or may be hereafter, authorized to convey or transfer to such county, and each such county, through its Commissioners Court, is expressly authorized and empowered to bind itself to comply with any and all terms and conditions which the United States Government, or any agency thereof, may impose as a prerequisite to the transfer or conveyance of any of such land or housing, or either of them, or any interest therein; and any instrument or deed conveying to said county any such land or any such housing, or any interest therein, may contain any conditions and provisions, covenants and warranties which may be prescribed by the United States Government, or any agency thereof, and agreed upon by said county acting through its Commissioners Court, provided that such terms and conditions are not inhibited by the Constitution of the State of Texas.

(c) For the purpose of purchasing or otherwise acquiring said lands or housing, or both, and improving, enlarging, extending or repairing the same, the Commissioners Court of any county may issue negotiable bonds of the county and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and the levying and collection of such taxes to be exercised in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of Texas, 1925, as amended.

(d) Counties are expressly authorized and empowered to lease or rent any lands, housing, or facilities acquired by them pursuant to this Act and to establish and revise the rent or charges therefor; to arrange or contract for the furnishing by any person or agency, public or private, of services, or facilities for, or in connection with, any of such lands, housing or facilities, or the occupants thereof;

(e) Said counties are further authorized to sell and convey all or any part of the land or housing so acquired or to lease or exchange same; and said counties are

further expressly authorized to execute oil, gas or mineral leases covering all or any part of said lands so acquired on such terms and conditions as may be deemed advisable by the Commissioners Court and for such consideration, including oil payments, gas payments, overriding royalties, etc. as may be deemed advisable; and such counties, through their Commissioners Courts, are expressly authorized and empowered to execute conveyances of minerals or mineral rights, and to generally contract for the exploration and development of the minerals underlying said land, if any, or any part thereof.

20. The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is authorized and empowered in all cases where such county has acquired a water supply from subterranean waters for county purposes, to sell, contract to sell and deliver any or all of such water which is not needed for county purposes to any public or municipal corporation, or political subdivision of this State, including any water control and improvement district, or fresh water supply district now created and existing, or which may hereafter be created under the laws of this State; any such water sold or contracted to be sold and delivered to any such public or municipal corporation or political subdivision of this State, may be used or re-sold for any lawful purpose; and said Commissioners Court shall have the right to fix and determine the rate or rates at which such water shall be sold to any such public or municipal corporation or political subdivision of this State, and to enter into contracts to sell and supply such water at such determined rate or rates for any term of years not exceeding forty (40); and all monies received by the county from the sale of such water shall be placed to the credit of the General Fund of the county and may be expended for general county purposes as now or hereafter permitted by law.

SECTION 4. Article 4487, Revised Statutes, is amended to read as follows:

Art. 4487. SUPPORT OF PATIENTS. Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. [~~If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county.~~] Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal.

SECTION 5. Section 5, Chapter 219, Acts of the 40th Legislature, Regular Session, 1927 (Article 4437a, Vernon's Texas Civil Statutes), is repealed.

SECTION 6. Article 4438, Revised Statutes, is repealed.

SECTION 7. Chapter 154, Tax Code, is amended by adding Section 154.0211 to read as follows:

Sec. 154.0211. ADDITIONAL TAX. (a) An additional tax is imposed on a person who uses or disposes of cigarettes in this state.

(b) The rate of the additional tax is determined on October 1, 1985, and regardless of the weights of the cigarettes, is:

(1) $4 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is less than $4.50 per thousand;

(2) $3.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $4.50 but less than $5 per thousand;

(3) $3 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $5 but less than $5.50 per thousand;

(4) $2.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $5.50 but less than $6 per thousand;

(5) $2 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $6 but less than $6.50 per thousand;

(6) $1.50 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $6.50 but less than $7 per thousand;

(7) $1 per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $7 but less than $7.50 per thousand; or

(8) 50 cents per thousand if the tax imposed by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), is at least $7.50 but less than $8 per thousand.

(c) No additional tax is imposed if the tax rate provided by Section 5701(b)(1), Internal Revenue Code (26 U.S.C.A. Sec. 5701), on October 1, 1985, is $8 or more.

(d) The additional taxes imposed by this section shall be added with the taxes imposed by Section 154.021 of this code and collected together as one tax.

SECTION 8. Section 154.603, Tax Code, is amended by amending Subsection (d) and by adding Subsections (e) and (f) to read as follows:

(d) Revenues allocated under Subsections [~~Subsection~~] (b) and (e) of this section shall be credited to the general revenue fund and then transferred from the general revenue fund to the appropriate funds as designated [~~in Subsection (b) of this section~~].

(e) For the period beginning October 1, 1985, and extending through August 31, 1987, the revenue received from the collection of additional taxes under Section 154.0211 of this code, without deduction for the enforcement fund, is allocated as follows:

(1) the first 50 cents per 1,000 cigarettes to the cancer resource fund;

(2) after the allocation under Subdivision (1) of this subsection has been made, the amount required to be deducted under Subsection (f) of this section to the indigent health care assistance fund;

(3) after the allocations under Subdivisions (1) and (2) of this subsection have been made, the next 50 cents per 1,000 cigarettes to the local parks, recreation, and open space fund until a total of $8 million has been allocated to that fund in the 1987 fiscal year; and

(4) the remainder, if any, to the general revenue fund.

(f) If **H.B No. 1280** of the 69th Legislature, Regular Session, 1985, becomes law, for the fiscal year ending August 31, 1986, the amount of the additional cigarette tax revenue remaining after the deduction required by Subdivision (1) of Subsection (e) of this section is allocated to the indigent health care assistance fund until $38,708,000 has been allocated to that fund from this source, and for the fiscal year ending August 31, 1987, the amount of the additional cigarette tax remaining after the deduction required by Subdivision (1) of Subsection (e) of this section is allocated to the indigent health care assistance fund until $46,188,000 has been allocated to that fund from this source. If **H.B No. 1280** of the 69th Legislature,

Regular Session, 1985, does not become law, after the allocation required by Subdivision (1) of Subsection (e) of this section, $2 per 1,000 cigarettes shall be allocated to the indigent health care assistance fund. After August 31, 1987, no allocations shall be made from the additional cigarette tax to the indigent health care assistance fund.

SECTION 9. Section 154.052(a), Tax Code, is amended to read as follows:

(a) A licensed distributor is entitled to a discount of four [~~2.75~~] percent of the face value of stamps purchased, except that an out-of-state purchaser residing in a state that does not give a discount on cigarette tax stamps purchased by a cigarette distributor residing in this state may not purchase stamps at a discount as provided by this section.

SECTION 10. Chapter 1, Title 71, Revised Statutes, is amended by adding Article 4447x to read as follows:

Art. 4447x. CANCER RESOURCE FUND. (a) The cancer resource fund is established in the state treasury as an account of the general revenue fund.

(b) The legislature may appropriate money deposited to the credit of the cancer resource fund only to the Texas Cancer Council for cancer prevention, cancer research, and medical care for cancer victims.

(c) Award of funds by the council for research purposes shall be made only to support Texas scientists whose research proposals have been submitted for scientific peer review by the National Cancer Institute of the National Institutes of Health. Research proposals that are evaluated and approved, but not funded, by the National Cancer Institute are eligible for an award of funds by the council. In addition, the council may provide start-up funding for establishing new cancer research initiatives at state scientific institutions.

(d) All interest earned from the investment of the cancer resource fund shall be deposited to the credit of the fund.

SECTION 11. (a) Subject to **H.B. 1280** of the 69th Legislature, 1985 (relating to the repeal of the "blue law" and to certain employment practices) becoming law, $10,462,000 for the fiscal year ending August 31, 1986, is transferred from the general revenue fund to the indigent health care assistance fund, and, for the fiscal year ending August 31, 1987, $13,782,000 is transferred from the general revenue fund to the indigent health care assistance fund.

(b) In order to pay any appropriation provided for by this Act from the indigent health care assistance fund or the cancer resource fund, the comptroller of public accounts may temporarily credit amounts to the indigent health care assistance fund or the cancer resource fund from other available funds and may make appropriate reimbursements from subsequent credits to these funds.

SECTION 12. (a) There is appropriated to the Texas Cancer Council $6,664,619 for the fiscal year ending August 31, 1986, and $5,087,133 for the fiscal year ending August 31, 1987, from the cancer resource fund for the purposes of Chapter 5, Acts of the 69th Legislature, Regular Session, 1985 (Article 4477-41, Vernon's Texas Civil Statutes), and Article 4447x, Revised Statutes. The payment of fringe benefits for staff employed by state agencies or state-supported institutions of higher education are included in these appropriations.

(b) There is appropriated to the Texas Department of Health from the indigent health care assistance fund:

(1) $10,770,000 for the fiscal year ending August 31, 1986, and $15,470,000 for the fiscal year ending August 31, 1987, for the perinatal program;

(2) $5 million for each fiscal year of the biennium ending August 31, 1987, for the women, infants, and children program; and

(3) $6,500,000 for the fiscal year ending August 31, 1986, and $12 million for the fiscal year ending August 31, 1987, for the primary care program.

(c) There is appropriated to the Texas Department of Human Resources from the indigent health care assistance fund:

(1) $18 million for each fiscal year of the biennium ending August 31, 1987, to provide medicaid coverage for the medically needy program;

(2) $1,900,000 for the fiscal year ending August 31, 1986, and $2,500,000 for the fiscal year ending August 31, 1987, for the state's match to counties for providing indigent care;

(3) $6 million for each fiscal year of the biennium ending August 31, 1987, to provide assistance for hospitals providing a disproportionate share of indigent health care; and

(4) $1 million for each fiscal year of the biennium ending August 31, 1987, to implement a computerized integrated eligibility services program in conjunction with the Texas Department of Health.

(d) During October 1985, the comptroller shall estimate the amount of revenue that will be credited to the indigent health care assistance fund during the fiscal year ending August 31, 1986. If the amount of the estimate is less than $49,170,000, the amount of each appropriation for the fiscal year ending August 31, 1986, under Subsections (b) and (c) of this section is proportionally reduced. During September 1986, the comptroller shall estimate the amount of revenue that will be credited to the indigent health care assistance fund during the fiscal year ending August 31, 1987. If the amount of the estimate is less than $59,970,000, the amount of each appropriation made under Subsections (b) and (c) of this section is proportionally reduced.

(e) On August 31, 1987, all unencumbered money credited to the cancer resource fund or to the indigent health care assistance fund is transferred to the general revenue fund.

SECTION 13. (a) Sections 1 and 2 of this Act take effect September 1, 1985, but a county, public hospital, or hospital district is not required to provide health care assistance as prescribed by the Indigent Health Care and Treatment Act, as adopted by this Act, until September 1, 1986. If indigent health care districts are authorized by constitutional amendment, an indigent health care district is not required to provide health care assistance as prescribed by the Indigent Health Care and Treatment Act, as adopted by this Act, until September 1, 1986, or the date on which the district is created, whichever date is later. Health care assistance provided before September 1, 1986, is governed by the law and practice in effect at the time that the assistance is provided. Those laws and practices are not affected by the adoption of the Indigent Health Care and Treatment Act until September 1, 1986, and are continued in effect after that date for determining the responsibilities and liabilities for services rendered before that date.

(b) Sections 3-6 of this Act take effect September 1, 1986.

(c) Sections 7-12 of this Act take effect October 1, 1985.

SECTION 14. The Texas Racing Act is enacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This Act may be cited as the Texas Racing Act.

Sec. 1.02. PURPOSES. The purpose of this Act is to raise revenue for use by the state and counties for providing indigent health care and treatment, to encourage tourism and employment opportunities in this state, and to provide for the strict regulation and control of pari-mutuel wagering in connection with that racing in counties on a local-option basis.

Sec. 1.03. DEFINITIONS. In this Act:

(1) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property.

(2) "Association" means a person licensed under this Act to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering.

(3) "Commission" means the Texas Racing Commission.

(4) "Comptroller" means the comptroller of public accounts.

(5) "Executive secretary" means the executive secretary of the Texas Racing Commission.

(6) "Horse race meeting" means the conducting of horse races on a day or during a period of consecutive or nonconsecutive days.

(7) "Thoroughbred horse" means a horse that is registered by the Jockey Club, New York City, New York.

(8) "Thoroughbred racing" means the form of horse racing in which Thoroughbred horses mounted by jockeys engage in a race over a distance of at least 870 yards.

(9) "Quarter horse" means a horse that is registered by the American Quarter Horse Association, Amarillo, Texas.

(10) "Quarter horse racing" means the form of horse racing in which quarter horses mounted by jockeys engage in a race over a distance of less than one-half mile.

(11) "Appaloosa horse" means a horse that is registered by the Appaloosa Horse Club, Moscow, Idaho.

(12) "Appaloosa racing" means the form of horse racing in which Appaloosa horses mounted by jockeys engage in a race.

(13) "Arabian horse" means a horse that is registered by the Arabian Horse Registry of America, Denver, Colorado.

(14) "Arabian racing" means the form of horse racing in which Arabian horses mounted by jockeys engage in a race.

(15) "Paint horse" means a horse that is registered by The American Paint Horse Association, Fort Worth, Texas.

(16) "Paint horse racing" means the form of horse racing in which paint horses mounted by jockeys engage in a race.

(17) "Enclosure" means all areas of a racing association's grounds, including the parking area, to which admission can be obtained only on payment of an admission fee or presentation of official credentials.

(18) "Pari-mutuel wagering" means the form of wagering on the outcome of greyhound or horse racing in which those who wager purchase tickets of various denominations on an animal or animals and all wagers for each race are pooled and held by the racing association for distribution of the total amount, less the deductions authorized by this Act, to holders of tickets on the winning animals.

(19) "Pari-mutuel pool" means the total amount of money wagered by patrons on the result of a particular race or combination of races, the total being divided into separate mutual pools for win, place, show, or combinations.

(20) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents, except in the event a minus pool occurs, the breakage shall be in multiples of five cents.

(21) "Texas-bred horse" means a horse that is sired by a stallion standing in Texas at the time of conception and foaled by a mare in Texas, except that a mare may be bred outside of Texas and brought into Texas to foal and every other foal sired and foaled under those conditions in the mare's lifetime shall be considered "Texas-bred" if the mare is bred back to a stallion standing in Texas. In all instances any foal must qualify under the rules of the commission.

(22) "Accredited Texas-bred horse" means a Texas-bred horse that meets the accreditation requirements of the state breed registry of that breed of horse.

(23) "Mixed racing" means a race in which different breeds of horses participate.

(24) "State horse breed registry" means a designated association administering accredited Texas-bred requirements for its specific breed of horses.

(25) "Racetrack" means a facility that is licensed under this Act for the conduct of pari-mutuel wagering on greyhound racing or horse racing.

(26) "Horse racing day" means the 24-hour period ending at 12 midnight.

(27) "Clerk of scales" means a racetrack official who is responsible for weighing a jockey before and after a race and for determining the post positions of horses entered in a race.

(28) "Jockey" means a professional rider licensed by the commission to ride horse races.

(29) "Jockey apprentice" means a stable assistant who is in training to become a jockey.

(30) "Official starter" means a racetrack official who is in charge of the start of a race.

(31) "Paddock judge" means a racetrack official who supervises animals entered in a race while the animals are assembled before the beginning of a race in an enclosure on the grounds of a racetrack.

(32) "Patrol judge" means a racetrack official who is stationed at a set point along the racetrack to monitor the running of a race and to determine that the race is fairly run.

(33) "Placing official" means a racetrack official who records the order of the finish of a race.

(34) "Stable foreman" means the person in charge of the building in which horses are lodged and fed.

(35) "Steward" means an executive official of a racetrack.

(36) "Trainer" means a person who is licensed by the commission to train racehorses.

(37) "Handicapper" means a person who predicts the winner of a horse race.

(38) "Authorized agent" means a person appointed by an owner of a horse to represent the owner. The term is limited to a person who is appointed by a written instrument that is acknowledged and approved by the commission.

(39) "Horseshoe inspector" means a racetrack official who inspects the shoes of the horses entered in a race.

(40) "Jockey room custodian" means a person who maintains the premises of a room in which jockeys prepare for a race.

(41) "Timer" means a racetrack official who times the running of a race.

(42) "Veterinarian" means a person licensed under The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes).

(43) "Concessionaire" means a person licensed by the commission to sell refreshments or souvenirs at a racetrack.

(44) "Combination" means a combination of races.

(45) "Regular wagering" means wagering on a single horse in a single race. The term includes wagering on the win pool, the place pool, or the show pool.

(46) "Multiple wagering" means wagering on two or more animals in one or more races.

(47) "Greyhound" means a purebred greyhound dog registered by the National Greyhound Association.

(48) "Greyhound racing" means any race in which two or more greyhounds engage in a contest of speed or endurance or pursue a mechanical lure.

(49) "Enclosure-public" means the areas of the grounds of an association to which a member of the public is admitted by payment of an admission fee or on presentation of authorized credentials, but excluding restricted areas such as the race track, the receiving area, and the area in which the animals are housed.

(50) "Greyhound racing days" means days on which a permitted racing association conducts greyhound racing. "One racing day" means a period commencing at noon and ending at 2 a.m. the next calendar day, except in the case of days on which there are matinee races.

(51) "Greyhound matinee race" means any performance starting between 10 a.m. and 5 p.m. on any day other than Sunday.

(52) "Performance" means the consecutive running of not more than 13 greyhound races.

ARTICLE 2. TEXAS RACING COMMISSION

Sec. 2.01. CREATION. The Texas Racing Commission is created.

Sec. 2.02. MEMBERSHIP. The commission consists of six members appointed by the governor with the advice and consent of the senate and three ex officio members who shall have the right to vote. The ex officio members are the chairman of the Public Safety Commission, the chairman of the Alcoholic Beverage Commission, and the comptroller of public accounts. In making appointments to the commission, the governor shall strive to achieve representation by all the population groups of the state, with regard to economic status, sex, race, and ethnicity.

Sec. 2.03. TERM OF OFFICE. (a) Except for the initial appointments, appointed members hold office for staggered terms of six years, with two members' terms expiring February 1 of each odd-numbered year. A member holds office until that member's successor is appointed and qualifies.

(b) In making the initial appointments, the governor shall designate two appointed members for terms expiring February 1, 1987, two for terms expiring February 1, 1989, and two for terms expiring February 1, 1991. The governor shall make the initial appointments on or before February 1, 1986.

(c) The ex officio members hold office on the commission for the time for which they hold their other offices.

Sec. 2.04. RESIDENCE REQUIREMENT. An appointed member is not eligible to be a member of the commission unless that appointee has been a resident of this state for at least 10 consecutive years.

Sec. 2.05. DISQUALIFICATIONS. A person is disqualified from being an appointed member of the commission if that person owns any financial interest in a racetrack or its operation or if that person is related within the second degree by affinity or the third degree by consanguinity to a person who owns any financial interest in a racetrack or its operation. All persons appointed to or employed by the commission are subject to all background checks and qualification criteria required to hold a racetrack license or other license under this Act. A person who has been convicted of a felony or of any crime involving moral turpitude is not eligible for appointment to the commission.

Sec. 2.06. FINANCIAL STATEMENT. Each appointed member of the commission and the executive secretary of the commission is an "appointed officer of a major state agency" within the meaning of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes). An appointee shall also file a detailed financial statement with the secretary of state of the type required by the Banking Department of Texas in the application for charter for state banks. The financial statement is a public record under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 2.07. PROHIBITED CONDUCT. A member of the commission commits an offense if the member:

(1) accepts any employment and, for that employment, remuneration from a racetrack association, whether the racetrack is located in this state or elsewhere;

(2) wagers or causes a wager to be placed on the outcome of a race conducted in this state; or

(3) accepts or is entitled to any part of the purse to be paid on a greyhound or a horse in a race conducted in this state.

Sec. 2.08. EXPENSES. Each appointed member of the commission is entitled to a per diem in an amount prescribed by legislative appropriation for each day spent in performing the duties of the office, and is entitled to reimbursement

for actual and necessary expenses incurred in performing those duties. The ex officio members are entitled to reimbursement for expenses from their respective agencies as provided by law for expenses incurred in the performance of their other official duties.

Sec. 2.09. OFFICES. The commission shall maintain its general office in the city of Austin. The commission may also establish branch offices.

Sec. 2.10. CHAIRMAN. The members of the commission shall elect one of the members chairman to serve a term of two years.

Sec. 2.11. MEETINGS OF COMMISSION. (a) The commission shall hold at least six regular meetings each year on dates fixed by the commission. The commission shall adopt rules providing for the holding of special meetings.

(b) A majority of the commission constitutes a quorum.

(c) The commission shall keep at its general office a public record of every vote.

Sec. 2.12. EXECUTIVE SECRETARY; EMPLOYEES. (a) The commission shall employ an executive secretary and other employees as necessary to administer this Act.

(b) The commission may not employ or continue to employ a person:

(1) who owns a financial interest in a racetrack or its operation;

(2) who accepts any remuneration from a racetrack;

(3) who is an owner, lessor, or lessee of a greyhound or a horse that is entered in a race in this state; or

(4) who accepts or is entitled to any part of the purse or purse supplement to be paid on a greyhound or a horse in a race conducted in this state.

(c) The commission may not employ or continue to employ a person related within the second degree by affinity or the third degree by consanguinity to a person who is subject to a disqualification prescribed by Subsection (b) of this section.

(d) The commission shall employ the executive secretary and other employees to reflect the diversity of the population of the state as regards race, color, handicap, sex, religion, age, and national origin.

Sec. 2.13. EXECUTIVE SECRETARY; DUTIES. The executive secretary shall keep the records of the commission and perform other duties required by the commission. The executive secretary serves at the pleasure of the commission on a full-time basis, and may not hold other employment.

Sec. 2.14. LEGAL REPRESENTATION. The attorney general shall designate at least one member of the attorney general's staff to counsel and advise the commission and to represent the commission in legal proceedings. The attorney general shall make available to the appropriate prosecuting attorneys any information obtained regarding violations of this Act.

Sec. 2.15. RECORDS. All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.

ARTICLE 3. POWERS AND DUTIES OF COMMISSION

Sec. 3.01. REGULATION AND SUPERVISION. The commission shall regulate and supervise every race meeting involving wagering on the result of greyhound or horse racing. All persons and things relating to the operation of those meetings are subject to regulation and supervision. The commission shall adopt rules for conducting racing involving wagering, and shall adopt other rules to administer this Act that are consistent with this Act.

Sec. 3.02. POWER OF ENTRY. A member of the commission, an authorized agent of the commission, a commissioned officer of the Department of Public Safety, or a peace officer of the local jurisdiction in which the association

maintains a place of business may enter the office, racetrack, or other place of business of an association at any time for the purpose of enforcing and administering this Act.

Sec. 3.03. REQUIREMENT OF BOOKS AND RECORDS; FINANCIAL STATEMENTS. The commission shall require associations, managers, and concessionaires to keep books and records and to submit financial statements to the commission. The commission shall adopt reasonable rules relating to those matters.

Sec. 3.04. SUBPOENA POWER. (a) A member of the commission, or a duly appointed agent of the commission, while involved in carrying out functions under this Act, may take testimony and may require by subpoena the attendance of witnesses and the production of books, records, papers, correspondence, and other documents that the commission considers advisable. Subpoenas shall be issued under the signature of the commission or its duly appointed agent and shall be served by any person designated by the commission. A member of the commission, or a duly appointed agent of the commission, may administer oaths or affirmations to witnesses appearing before the commission or its agents.

(b) If a subpoena issued under this section is disobeyed, the commission or its duly appointed agent may invoke the aid of the appropriate state court in requiring compliance with the subpoena. Any court that has jurisdiction where the person in violation of the subpoena is found or transacts business may issue an order requiring the person to appear and testify and to produce books, records, papers, correspondence, and documents. Failure to obey the order of the court shall be punished by the court as contempt.

Sec. 3.05. CERTIFIED DOCUMENTS. Instead of requiring an affidavit or other sworn statement in any application or other document required to be filed with the commission, the commission may require a certification of the document under penalty of perjury in the form the commission may prescribe.

Sec. 3.06. OFFICIALS OF RACE MEETINGS. (a) Each horse race meeting shall be supervised by three stewards appointed and compensated by the commission. For each race meeting, the commission shall also employ a state veterinarian and shall approve the placing judges, patrol judges, starter, and all other officials appointed by the appropriate association. For each horse race meeting, the commission shall also approve the horse identifier, horseshoe inspector, and other appropriate officials.

(b) The commission shall make rules specifying the authority and the duties of each official, including the power of stewards to impose penalties for unethical practices or violations of racing rules. A penalty imposed by the stewards may include a fine of not more than $5,000, a suspension for not more than one year, or both a fine and suspension. If, in the opinion of the stewards, the allowable penalties are not sufficient, they may refer the case to the commission for further action.

(c) The commission shall require each steward to take and pass both a written examination and a medical examination annually. The commission by rule shall prescribe the methods and procedures for taking the examinations and the standards for passing. Failure to pass an examination is a ground for refusal to issue an original or renewal steward's license or for suspension or revocation of a steward's license.

(d) Medication or drug testing performed under Section 14.03 of this Act shall be conducted either by the Texas Veterinary Medical Diagnostic Laboratory or in conjunction with or by a private or public agency that is approved by the commission and the Texas Veterinary Medical Diagnostic Laboratory and that is accredited by the American Association of Veterinary Laboratory Diagnosticians. Charges for services performed under this section by the Texas Veterinary Medical Diagnostic Laboratory or by an approved and accredited private or public agency

shall be forwarded to the commission for approval as to the reasonableness of the charges for the services. Charges may include but are not limited to expenses incurred for travel, lodging, testing, and processing of test results. The reasonable charges associated with medication or drug testing conducted under this Act shall be paid by the association that receives the services. On the approval of the charges as reasonable, the commission shall forward a copy of the charges to the association that receives the services for immediate payment. All persons performing testing services under this section and Section 14.03 of this Act must be licensed under Article 7 of this Act. A person conducting tests under this section is a state veterinarian for the purposes of Subsection (a) of this section.

(e) To pay the charges associated with the medication or drug testing, an association may use the money retained by the association on tickets that are purchased as wagers on winning horses and that are not cashed by the holders of the tickets. If additional amounts are needed to pay the charges, the association shall pay those additional amounts. If the amount retained exceeds the amount needed to pay the charges, the association shall pay the excess to the comptroller of public accounts for deposit in the manner provided by Section 3.08 of this Act.

Sec. 3.07. APPEAL FROM DECISION OF STEWARDS. A final decision of the stewards may be appealed to the commission. The commission shall adopt procedural rules relating to those appeals. The decision of the stewards is final unless reversed by the commission or unless the commission orders otherwise.

Sec. 3.08. FUNDING. The comptroller shall deposit the state's share of each pari-mutuel pool from horse racing in the state treasury to the credit of a special fund to be allocated as follows:

(i) 10% to the local parks fund;

(ii) 10% to the Agricultural Trust fund;

(iii) 20% to the Water Assistance fund; and

(iv) the remainder to Indigent Health Care Assistance Fund.

The commission shall deposit 50 percent of the money it collects under this Act from horse racing in the state treasury to the credit of a special fund to be known as the comptroller's racing enforcement fund. The commission shall deposit the balance of the money it collects under this Act to the credit of a special fund to be known as the Texas Racing Commission fund. The Texas Racing Commission fund may be appropriated only for the administration and enforcement of this Act. The comptroller's racing enforcement fund may only be appropriated to the comptroller for the duties assigned to the office of the state comptroller of public accounts under this Act. Any unappropriated money remaining in those special funds at the close of each fiscal biennium shall be transferred to the general revenue fund and may be appropriated for any legal purpose. The legislature may also appropriate money from the general revenue fund for the administration and enforcement of this Act. Any amount of general revenue appropriated for the administration and enforcement of this Act in excess of the cumulative amount deposited in the Texas Racing Commission fund shall be reimbursed from the Texas Racing Commission fund not later than one year after the date on which the general revenue funds are appropriated, with 12 percent interest per year.

Sec. 3.09. ANNUAL REPORT. The commission shall make a report to the governor, lieutenant governor, and speaker of the house of representatives not later than January 31 of each year. The report shall cover the operations of the commission and the condition of horse breeding and racing and greyhound breeding and racing during the previous year, and shall include any recommendations the commission considers appropriate.

Sec. 3.10. COOPERATION WITH PEACE OFFICERS. (a) The commission shall cooperate with all district attorneys, criminal district attorneys, county attorneys, the Department of Public Safety, the attorney general, and all

peace officers in enforcing this Act. Under its authority to conduct criminal justice information record checks as hereinafter described, the commission shall maintain and exchange pertinent intelligence data with other states and agencies.

(b) The attorney general annually shall certify to the legislature the amount of funds expended from the attorney general operating fund for oversight, counsel, or enforcement of the provisions of this Act. The certified amount, after verification by the state comptroller of public accounts, shall be restored to the attorney general operating fund on a dollar-for-dollar basis from the Texas Racing Commission fund before the appropriation of any general revenue funds. The attorney general operating fund shall be reimbursed on a biennial basis.

Sec. 3.11. REPORTING OF VIOLATIONS. The commission's rules shall allow anonymous reporting of violations of this Act or of rules adopted by the commission.

ARTICLE 4. POWERS AND DUTIES OF COMPTROLLER

Sec. 4.01. BOOKS AND RECORDS. All books, records, and financial statements required by the commission under Section 3.03 of this Act are open to inspection by the comptroller.

Sec. 4.02. POWER OF ENTRY. The comptroller and the authorized agents of the comptroller may enter the office, racetrack, or other place of business of an association at any time to inspect an association's books, records, or financial statements required under Section 3.03 of this Act.

Sec. 4.03. RULES. The comptroller may adopt rules for the enforcement of the comptroller's powers and duties under this Act.

Sec. 4.04. COLLECTION OF STATE'S PORTION OF PARI-MUTUEL POOL. The comptroller may prescribe by rule procedures for the collection of the state's portion of each pari-mutuel pool. The state's portion of each pool shall be deposited as provided by Sections 3.08, 6.10, 6.11, and 6.12 of this Act at the end of each racing day.

Sec. 4.05. COMPLIANCE. If an association does not comply with a rule adopted under this article or refuses to allow access to or inspection of any of its required books, records, or financial statements or if the association is shown on the records of the comptroller as being delinquent for the state's portion of the pari-mutuel pool collected by the comptroller, the comptroller shall certify that fact to the commission. On receipt of the certification, the commission shall immediately revoke or suspend the association's license.

ARTICLE 5. GENERAL LICENSE PROVISIONS

Sec. 5.01. FORM; CERTIFICATE; FEES. (a) The commission shall prescribe forms for applications for licenses and shall provide each licensee with a license certificate or credentials.

(b) The commission shall annually prescribe reasonable license fees for each category of license issued under this Act. The fees shall be sufficient to pay the costs of administering and enforcing the licensing program created under this Act.

Sec. 5.02. JUDICIAL REVIEW. Judicial review of an order of the commission refusing to issue an original or renewal racetrack license or revoking or suspending a racetrack license is under the substantial evidence rule. Judicial review of an order respecting any other license is by trial de novo.

Sec. 5.03. FINGERPRINTS. (a) An applicant for any license under this Act must submit to the commission a complete set of fingerprints of the individual natural person applying for the license or, if the applicant is not an individual natural person, a complete set of fingerprints of all officers, directors, incorporators, shareholders of more than five percent of the outstanding stock of a corporate licensee, or other members of any group of persons applying for a license under this Act.

(b) The commission shall, not later than the next day after receiving the prints, forward the prints by mail to the Department of Public Safety. The

department shall classify the prints and check them against its fingerprint files and shall report to the commission its findings concerning the criminal record of the applicant or the lack of such a record. A license may not be issued until the report is made to the commission.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a license on forms approved and furnished by the Department of Public Safety and shall immediately deliver them to the commission.

Sec. 5.04. ACCESS TO CRIMINAL HISTORY RECORDS. (a) The commission is authorized to obtain any criminal history record information that relates to each applicant for employment by the commission and to each applicant for a license issued by the commission and that is maintained by the Department of Public Safety or the Federal Bureau of Investigation Identification Division. The commission may refuse to recommend an applicant who fails to provide a complete set of fingerprints.

(b) The commission may obtain criminal history record information from any law enforcement agency.

(c) The criminal history record information received under this section is for the exclusive use of the commission and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or with the consent of the applicant.

ARTICLE 6. RACETRACK LICENSES

Sec. 6.01. LICENSE REQUIRED. A person shall not conduct a greyhound race meeting or a horse race meeting with wagering on the results without a racetrack license.

Sec. 6.02. CLASSIFICATION OF HORSE-RACING TRACKS. (a) Horse-racing tracks are classified as class 1 racetracks, class 2 racetracks, and class 3 racetracks.

(b) A class 1 racetrack is a racetrack on which racing is conducted for a minimum of 45 days during a calendar year, the number of days and the actual dates to be determined by the commission under Article 8 of this Act. A class 1 racetrack may operate only in a county with a population of not less than 750,000, according to the most recent federal census, or in a county immediately adjacent to a county with such a population. Not more than four class 1 racetracks may be licensed and operated in this state.

(c) A class 2 racetrack is a racetrack on which racing is conducted for a number of days not to exceed 44 days during a calendar year. An association that holds a class 2 racetrack license and that conducted horse races in 1985 that were approved by the American Quarter Horse Association is entitled to conduct races for a number of days not to exceed 44 calendar days per year on the calendar dates selected by the association.

(d) A class 3 racetrack is a racetrack operated by a county or a nonprofit fair under Article 12 of this Act. An association that holds a class 3 racetrack license and that conducted horse races in 1984 is entitled to conduct races for a number of days not to exceed 16 calendar days per year on the calendar dates selected by the association.

Sec. 6.03. APPLICATION. (a) The commission shall require each applicant for an original racetrack license or a renewal license to submit an application, on a form prescribed by the commission, containing the following information:

(1) if the applicant is an individual, the full name of the applicant, the applicant's date of birth, a physical description of the applicant, the applicant's current address and telephone number, and a statement by the applicant disclosing any arrest or conviction for a felony or for a misdemeanor, except a misdemeanor under the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) or a similar misdemeanor traffic offense;

(2) if the applicant is a corporation, the state under which it is incorporated, the names and addresses of the corporation's agents for service of process in this state, the names and addresses of its directors and stockholders, the dates of birth of its directors and stockholders, physical descriptions of its directors and stockholders, the current addresses and telephone numbers of its directors and stockholders, and a statement by each director and stockholder disclosing any arrest or conviction for a felony or for a misdemeanor, except a misdemeanor under the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) or a similar misdemeanor traffic offense;

(3) if the applicant is an association, the names and addresses of each of its members, each member's date of birth, a physical description of each member, each member's current address and telephone number, and a statement by each member disclosing any arrest or conviction for a felony or for a misdemeanor, except a misdemeanor under the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) or a similar misdemeanor traffic offense;

(4) the exact location at which a race meeting is to be conducted;

(5) if the racing facility is in existence, whether it is owned by the applicant and, if leased to the applicant, the name and address of the owner and, if the owner is a corporation, the names and addresses of its directors, stockholders, and agents for service of process in this state; if construction of the facility has not been initiated, whether it is to be owned by the applicant and, if it is to be leased to the applicant, the name and address of the prospective owner and, if the owner is a corporation, the names and addresses of its directors, stockholders, and agents for service of process in this state;

(6) a detailed statement of the assets and liabilities of the applicant;

(7) the kind of racing to be conducted and the dates requested;

(8) proof of residency as required by Section 6.06 of this article;

(9) a copy of each management and concession contract dealing with the proposed license at the proposed location in which the applicant has an interest; the applicant or licensee shall advise the commission of any change in any management and concession contract; all management and concession contracts must have prior approval of the commission; and

(10) any other information required by the commission.

(b) The application must be sworn to by the applicant or, if a corporation or association, by its chief executive officer.

(c) The application for an original racetrack license must be accompanied by an application fee in the form of a cashier's check or certified check.

(d) The minimum application fee for a horse-racing track is $30,000 for a class 1 racetrack, $15,000 for a class 2 racetrack, and $2,500 for a class 3 racetrack. The minimum application fee for a greyhound racing track is $20,000. Using the minimum fees, the commission by rule shall establish a schedule of application fees for the various types and sizes of racing facilities. The commission shall set the application fees in amounts that are reasonable and necessary to cover the costs of administering this Act.

(e) The burden of proof is on the applicant to show compliance with this Act and with the rules of the commission. An applicant who does not show the necessary compliance is not eligible for a license under this article.

Sec. 6.04. ISSUANCE OF LICENSE; BOND. (a) Subject to Article 16 of this Act, the commission may issue a racetrack license to a qualified person if it finds that the conduct of race meetings at the proposed tract and location will be in the public interest, complies with all zoning laws, and complies with this Act and the rules adopted by the commission, and if the commission finds by clear and convincing evidence that the applicant will comply with all criminal laws of this state.

(b) Before issuance of a license under this article, an applicant for a horse-racing track must give a bond in the sum of $100,000 payable to the state, with a surety or sureties approved by the commission, conditioned on compliance with this Act and the rules adopted under this Act. An applicant for a greyhound racetrack license must give an equivalent bond in the sum of $20,000.

Sec. 6.05. CONSTRUCTION NOT TO PRECEDE ISSUANCE. Except as otherwise permitted by this Act, the commission may not issue a racetrack license to a person who has begun construction of a track or surrounding structures before applying to and receiving from the commission approval to begin construction at a designated site.

Sec. 6.06. RACETRACK LICENSES; GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION. (a) To preserve and protect the public health, welfare, and safety, the commission shall adopt rules relating to license applications, renewal applications, to the financial responsibility, moral character, and ability of applicants, and to all matters relating to the planning, construction, and operation of racetracks. The commission may refuse to issue an original or renewal racetrack license or may revoke or suspend a license if, after notice and hearing, it has reasonable grounds to believe and finds that:

(1) the applicant has been convicted in a court of competent jurisdiction of a violation of this Act or any rule adopted by the commission, or that the applicant has aided, abetted, or conspired with any person to commit such a violation;

(2) the applicant has been convicted of a felony or of any crime involving moral turpitude that is reasonably related to the applicant's present fitness to hold a license under this Act;

(3) the applicant has violated or has caused to be violated this Act or a rule of the commission in a manner that involves moral turpitude, as distinguished from a technical violation of this Act or of a rule;

(4) the applicant is unqualified, by experience or otherwise, to perform the duties required of a licensee under this Act;

(5) the applicant failed to answer or has falsely or incorrectly answered a question in an original or renewal application;

(6) the applicant fails to disclose the true ownership or interest in a greyhound or horse as required by the rules of the commission;

(7) the applicant is indebted to the state for any fees or for the payment of a penalty imposed by this Act or by a rule of the commission;

(8) the applicant is not of good moral character or the applicant's reputation as a peaceable, law-abiding citizen in the community where the applicant resides is bad;

(9) the applicant has not yet attained the minimum age necessary to purchase alcoholic beverages in this state;

(10) the applicant is in the habit of using alcoholic beverages to excess or is mentally incapacitated;

(11) the applicant may be excluded from a track enclosure under Article 13 or 14 of this Act;

(12) the applicant has not been a United States citizen residing in this state for the period of 10 consecutive years immediately preceding the filing of the application;

(13) the applicant has improperly used a license certificate, credential, or identification card issued under this Act;

(14) the applicant is residentially domiciled with a person whose license has been revoked for cause within the 12 months immediately preceding the date of the present application;

(15) the applicant has failed or refused to furnish a true copy of the application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(16) the applicant is engaged in activities or practices that the commission finds are detrimental to the best interests of the public and the sport of greyhound racing or horse racing.

(b) Except as provided by subsection (h) herein, Subsection (a) of this section applies to a corporation or any other organization or group whose application is comprised of more than one person if any shareholder, director, officer, or incorporator is disqualified under Subsection (a) of this section.

(c) A person who is an owner, partner, or member of an association, or a director or stockholder of a corporation, or a person related within the second degree by affinity or the third degree by consanguinity to a person who is an owner, partner, or member of an association, or a director or stockholder of a corporation, that has an ownership interest in a racetrack may not enter a greyhound or horse in any race at any racetrack in which the person or related person has an ownership interest. That person may wager or cause a wager to be placed at any racetrack in which the person has an interest if the person is not otherwise disqualified.

(d) A license for operation of a class 1 or class 2 racetrack or a greyhound racetrack may not be issued to a corporation unless the corporation is incorporated under the laws of this state and all of the stock of the corporation is owned at all times by individuals who meet the qualifications prescribed by this section for individual applicants except as provided in subsection (h) herein.

(e) Except as provided in subsection (h) of this section, partnerships, firms, and associations applying for licenses must be composed wholly of citizens possessing the qualifications enumerated in this section for individual applicants. A corporation holding a license to operate a racetrack under this Act that violates this subsection is subject to forfeiture of its charter, and the attorney general, on receipt of information relating to such a violation, shall file suit in a district court of Travis County for cancellation of the charter and revocation of the license issued under this Act. Subterfuge in the operation of a racetrack shall be prevented, and this Act shall be liberally construed to carry out this intent.

(f) The commission may condition the issuance of a license on the observance of its rules. The commission may amend the rules at any time and may condition the continued holding of the license on compliance with the rules as amended.

(g) The commission may refuse to issue a license, or may suspend or revoke a license of a licensee under this article who knowingly or intentionally allows a person to have access to an enclosure where greyhound races or horse races are conducted who has engaged in bookmaking, touting, or illegal wagering, whose income is from illegal activities or enterprises, or who has been convicted of a violation of this Act.

(h) Nothing in this Act shall be grounds for refusing to issue a racetrack license or for suspending or revoking same based on the residence of an individual owning an interest in a multiple or corporate applicant or licensee as long as this Section's residency requirements are met by individuals owning enough of the interests therein so that if acting in concert, they have the power to control the racetrack's activity, by appointment or otherwise.

Sec. 6.07. LEASE. (a) The commission may adopt rules to authorize an association, as lessee, to contract for the lease of a racetrack and the surrounding structures.

(b) The commission may not approve a lease if:

(1) it appears that the lease is a subterfuge to evade compliance with Section 6.05 or 6.06 of this article;

(2) the racetrack and surrounding structures do not conform to the rules adopted under this Act; or

(3) the lessee, prospective lessee, or lessor is disqualified from holding a racetrack license.

(c) Each lessor and lessee under this section must comply with the disclosure requirements of Section 6.03(a)(1) of this article. The commission may not approve a lease if the lessor and lessee do not provide the required information.

Sec. 6.08. RACETRACK SPECIFICATIONS; MAJOR CAPITAL IMPROVEMENTS. (a) The commission by rule shall determine specifications for racetracks and racetrack facilities.

(b) An association may submit to the commission the plans and specifications for the construction or renovation of racetrack facilities that constitute capital investment and that require an expenditure of $5,000 or more. The commission by rule shall provide for the manner of submissions under this subsection, including the submission of architectural drawings and work schedules. The commission shall approve a submission under this subsection if the plans and specifications comply with the rules of the commission made under Subsection (a) of this section.

(c) For the purpose of Subsection (b) of this section, the construction or renovation of racetrack facilities that constitute a capital investment may include:

(1) the grading, leveling, railing, and preparation of the track;

(2) paddocks;

(3) stable buildings and fixtures;

(4) kennel buildings and fixtures;

(5) starting gates and judges', jockeys', owners', and trainers' quarters and facilities;

(6) grandstands, seating areas, rest rooms, parking areas, and concessions facilities;

(7) wagering windows, counting rooms, equipment buildings, and security facilities;

(8) association offices and meeting rooms;

(9) fixtures reasonably associated with any other qualifying capital investment; and

(10) other purchases of depreciable capital items having a useful life of more than one year and which the commission considers to be a necessary and proper item for the operation of a racetrack.

Sec. 6.09. SPECIAL PROVISIONS RELATING TO HORSE RACING: DEDUCTIONS FROM POOL; ALLOCATIONS OF SHARES AND BREAKAGE. (a) A horse-racing association shall deduct the following shares from each pari-mutuel pool:

(1) an amount equal to five percent of the pool shall be set aside for purses;

(2) an amount equal to five percent of the pool shall be set aside for the state tax; and

(3) an amount equal to seven percent of the pool on regular wagering and an amount equal to nine percent of the pool on multiple wagering, which the association shall retain as its commission.

(b) Unless inconsistent with the provisions of this Act, Chapters 111-113, Tax Code, including, without limitation, provisions relating to the assessment of penalty and interest, apply to the collection of the state's share under this Act. The state taxes under this Act are treated as any other tax. The comptroller shall collect the state's tax deducted from the pool immediately after each race. For purposes of collecting the state's share under this Act, the comptroller may use any procedure authorized by Sections 151.609 through 151.612, Tax Code, for enforcement of liability under Chapter 151, Tax Code.

(c) The breakage shall be sent to or collected by the commission according to the commission's rules for distribution as provided by Subsections (d)-(f) of this section.

(d) Ten percent of the breakage is allocated to the appropriate state breed registry for payment of administrative costs incurred in making distributions under

this section. Ten percent of the breakage is allocated to stakes races for accredited Texas-bred races. The commission shall allocate the remaining 80 percent of the breakage as follows:

(1) 40 percent of the remaining breakage is allocated to the owners of the accredited Texas-bred horses that finish first, second, or third;

(2) 40 percent is allocated to the breeders of the accredited Texas-bred horses that finish first, second, or third; and

(3) 20 percent is allocated to the owner of the stallion whose get finish first, second, or third.

(e) For purposes of this section:

(1) "Horse owner" means a person who is owner of record of an accredited Texas-bred horse at the time of a race;

(2) "Breeder" means a person who is the owner at the time of conception of the mare that foaled the accredited Texas-bred horse; and

(3) "Stallion owner" means a person who is at the time of breeding owner of record of the stallion that sired the accredited Texas-bred horse.

(f) The commission shall distribute the breakage to the appropriate persons as provided by this section. If the commission is unable to distribute a share of the breakage to a person who is entitled to a share, the commission shall retain that share in the Texas Racing Commission fund.

Sec. 6.10. DISPOSITION OF PARI-MUTUEL POOLS AT GREYHOUND RACES. (a) Every association authorized under this Act to conduct pari-mutuel wagering at a greyhound race meeting on races run shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, provided such tickets be presented for payment before April 1 of the year following the year of their purchase, less a commission of 18 percent of the total deposited in pools resulting from regular win, place, and show wagering, 19 percent of the total deposits in the pools resulting from multiple wagering, and 20 percent of the total deposits in pools resulting from all other wagering.

(b) Of the amount so retained from the pari-mutuel pools, the association shall pay to the state for the privilege of conducting pari-mutuel wagering during the greyhound race meetings held by such association:

(1) subject to Subsection (c) of this section, a fee that is hereby imposed of six percent of the total deposits in regular wagering pools per performance and 6-1/2 percent of the total deposits in multiple and other wagering pools per performance;

(2) 50 percent of the breakage.

(c) On each racing day, the association shall pay:

(1) the tax due the state to the comptroller;

(2) the 25 percent of the breakage due the state to the comptroller; and

(3) the other 25 percent of the breakage due the state to the commission.

(d) The 50 percent of the breakage retained by the association shall only be used for stake races and for Texas-bred stake races.

Sec. 6.11. ALLOCATION OF PURSE. (a) In no event shall the purse be less than three percent of the total deposited in each pool and shall be derived from the commission retained by the association under Section 6.10 of this article.

(b) Thirty-five percent of the portion of a purse allocated to a greyhound shall be paid to its owner and the balance thereof shall be paid to its contract kennel.

Sec. 6.12. USE OF STATE REVENUE. (a) The comptroller shall deposit the state's tax from greyhound racing based on a percentage of each pari-mutuel pool into a special fund of the state treasury to be appropriated only for use in programs for Aid to Families with Dependent Children (A.F.D.C.).

(b) The commission shall deposit all money it collects pursuant to this Act from greyhound racing to the credit of the Texas Racing Commission fund for use in the administration and enforcement of this Act. The Texas Racing Commission fund may be appropriated only for the administration and enforcement of this Act.

(c) The breakage received by the comptroller shall be deposited into a special fund of the state treasury to be appropriated only to the coastal beach cleaning fund administered by the Parks and Wildlife Department.

Sec. 6.13. NOT TRANSFERABLE. (a) A racetrack license is not transferable.

(b) In the event of the death of any person whose death causes a violation of the licensing provisions of this Act, the commission may issue a temporary license for a period not to exceed one year under rules adopted by the commission.

Sec. 6.14. FINANCIAL DISCLOSURE. (a) The commission by rule shall require that each association holding a license for a class 1 racetrack, class 2 racetrack, or greyhound racetrack annually file with the commission a detailed financial statement that contains the names and addresses of all stockholders, indicates compliance during the filing period with Section 6.06 of this article, and includes any other information required by the commission.

(b) Each transaction that involves an acquisition or a transfer of a pecuniary interest in the association must receive prior approval from the commission. A transaction that changes the ownership of the association requires submission of updated information of the type required to be disclosed under Section 6.03(a)(1) of this article.

Sec. 6.15. RACING RESTRICTED TO DESIGNATED PLACE; NUMBER OF GREYHOUND TRACKS RESTRICTED. (a) An association may not conduct greyhound or horse racing at any place other than the place designated in the license except as provided by this section or by Section 6.16 of this article. However, if the racetrack or enclosure designated in the license becomes unsuitable for racing because of fire, flood, or other catastrophe, a race meeting or any remaining portion of a meeting may be conducted temporarily at any other racetrack or place within the county designated by the commission.

(b) The commission may not issue more than one license for a greyhound racetrack in any county.

Sec. 6.16. RACING AT TEMPORARY LOCATION. After an association has been granted a license to operate a racetrack, and before the completion of construction at the designated place for which the license was issued, the commission may, on application by the association, issue a temporary license that permits the association to conduct races at a location in the same county for a period expiring two years after the date of issuance of the temporary license or on the completion of the permanent facility, whichever occurs first. The commission may set the conditions and standards for issuance of a temporary license and allocation of appropriate race days. An applicant for a temporary license must pay the application fees and must post the bonds required of other licensees before the issuance of a temporary license.

Sec. 6.17. EMPLOYMENT OF FORMER COMMISSION MEMBERS OR EMPLOYEES. An association may not employ any person who has been a member of the commission or an employee employed by the commission in a position in the state employment classification plan of grade 12 or above, or any person related within the second degree by affinity or the third degree by consanguinity to such a member or employee, during the two-year period immediately preceding the employment by the association.

Sec. 6.18. CITY AND COUNTY TAX. (a) A commissioners court may collect a tax not to exceed 15 cents as an admission tax to a licensed horse racetrack located within the county. The court may collect an additional tax not to exceed 15 cents as an admission tax to a licensed horse racetrack located within the county for allocation among the incorporated cities or towns in the county. The court shall collect the additional tax if requested to do so by the governing bodies of a majority of the incorporated cities and towns in the county. Allocation of the tax shall be based on the population within the county of the cities or towns.

(b) The commissioners court by order may establish procedures for the collection of the tax under Subsection (a) of this section. The procedures may require a person holding a horse racetrack license to keep records and file reports as considered necessary by the commissioners court.

(c) The amount collected by the county under Subsection (a) of this section may be used only by the county in which the horse racetrack is located for the purpose of providing the county with funds to enforce the provisions of this Act, including but not limited to the hiring of investigators, attorneys, staff, and other personnel to assist the county attorney or district attorney in enforcing this Act.

(d) On or before the first day of each month, a greyhound racetrack licensee shall pay 50 percent of the gross receipts, less refunds, from the minimum admission fees for the past calendar month to the county in which the track is located for deposit by the county in its general fund.

(e) On or before the 90th day after the closing of a greyhound race meeting, the association shall also pay to the general revenue fund of the county in which it is located all redistributable money in a pari-mutuel pool which is not claimed by the purshaser on or before the 60th day following their purchase less amounts retained under Sec. 3.06 (e) of this Act.

Sec. 6.19. RECOGNITION OF CERTAIN RACETRACKS IN MEXICO. (a) To promote cooperation between the racing industry of this state and that of the neighboring states of the Republic of Mexico, the commission, on application of the owner or operator of a racetrack in a neighboring Mexican state at which horse racing is regularly conducted, may recognize that racetrack as having a racing program substantially equivalent to the program required under this Act of a class 1, class 2, or class 3 racetrack.

(b) A person may not advertise in this state a horse racetrack located in a neighboring state of the Republic of Mexico and represent that the racetrack has been recognized as substantially equivalent to a class 1, class 2, or class 3 racetrack in this state unless the commission so recognizes the Mexican racetrack as provided by this section.

(c) The commission may withdraw or alter any recognition it has made under this section if it finds that the facts warrant that action.

ARTICLE 7. OTHER LICENSES

Sec. 7.01. LICENSE REQUIRED. A person may not participate in racing with pari-mutuel wagering as regulated by this Act without first obtaining a license from the commission.

Sec. 7.02. LICENSED ACTIVITIES. The horse owners, greyhound owners, stewards, trainers, paddock judges, horse jockeys, apprentice jockeys, jockey agents, horseshoe inspectors, placing judges, patrol judges, horse identifiers, starters, veterinarians, horseshoers, kennel personnel, stable foremen, stable agents, exercise boys, valets, grooms, pari-mutuel employees, concessionaires, and all other persons involved in any capacity with racing with pari-mutuel wagering, other than as spectators, as regulated by this Act, are subject to the licensing provisions of this article.

Sec. 7.03. ISSUANCE. The commission shall issue a license to a qualified person on application and payment of the license fee.

Sec. 7.04. LICENSES; GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION. The commission, after notice and hearing, may refuse to issue any original or renewal license under this article or may revoke or suspend the license if it has reasonable grounds to believe and finds that:

(1) the applicant has been convicted in a court of competent jurisdiction of a violation of this Act or of any rule adopted by the commission, or has aided, abetted, or conspired with any person to commit such a violation;

(2) the applicant has been convicted of a felony or of any crime involving moral turpitude that is reasonably related to the applicant's present fitness to hold a license under this Act;

(3) the applicant has violated or has caused to be violated this Act or a rule of the commission in a manner that involves moral turpitude, as distinguished from a technical violation of this Act or of a rule;

(4) the applicant is unqualified, by experience or otherwise, to perform the duties required of a licensee under this Act;

(5) the applicant failed to answer or has falsely or incorrectly answered a question in an original or renewal application;

(6) the applicant fails to disclose the true ownership or interest in a greyhound or horse as required by the rules of the commission;

(7) the applicant is indebted to the state for any fees or for the payment of a penalty imposed by this Act or by a rule of the commission;

(8) the applicant is not of good moral character or the applicant's reputation as a peaceable, law-abiding citizen in the community where the applicant resides is bad;

(9) the applicant is in the habit of using alcoholic beverages to excess or is mentally incapacitated;

(10) the applicant may be excluded from a track enclosure under Article 13 or 14 of this Act;

(11) the commission determines that the applicant has improperly used a license certificate, credential, or identification card issued under this Act;

(12) the applicant is residentially domiciled with a person whose license has been revoked for cause within the 12 months immediately preceding the date of the present application;

(13) the applicant has failed or refused to furnish a true copy of the application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(14) the applicant is engaged in activities or practices that are detrimental to the best interests of the public and the sport of horse racing or greyhound racing.

Sec. 7.05. LICENSE FEES. The commission shall by rule prescribe a fee schedule for licenses issued under this article. The commission shall base the license fees on the relative or comparative incomes or property interests of the various categories of licensees, with the lower income category of licensees being charged nearer the minimum fee and the higher income category of licensees charged nearer the maximum fee.

Sec. 7.06. FORM OF LICENSE. The commission shall issue a license certificate under this article in the form of an identification card with photograph and fingerprints.

Sec. 7.07. TERM OF LICENSE. A license issued under this article is valid for a 12-month period following the date of its issuance. It is renewable on application and payment of the fee in accordance with the rules of the commission.

Sec. 7.08. VALID THROUGHOUT STATE. A license issued under this article is valid at all race meetings conducted in this state.

Sec. 7.09. TEMPORARY LICENSES. Pending investigation of an applicant's qualifications to receive an original or renewal license, the commission may issue a temporary license to an applicant under this article whose application appears to comply with the requirements of law and who has paid the necessary fee. The temporary license is valid for a period not to exceed 30 days from the date of issuance.

Sec. 7.10. BONDS. The commission by rule may require an applicant for a license under this article to provide a bond to protect the interests of the state.

ARTICLE 8. ALLOCATION OF RACING DAYS—HORSES

Sec. 8.01. ALLOCATION. The commission shall allocate the racing days for the conduct of racing at each racetrack licensed under this Act. An equal number of race days shall be allocated at class 1 tracks for both Thoroughbred and quarter horse races. The commission may prohibit Sunday racing unless the prohibition would conflict with another provision of this Act.

Sec. 8.02. CHARITY DAYS. (a) The commission shall grant additional racing days to each association during a race meeting, to be conducted as charity days. The commission shall grant at least five additional days to each class 1 racetrack and at least three additional days to each class 2 racetrack.

(b) The commission shall adopt rules relating to the conduct of charity days. The commission shall ensure that the races held by an association on a charity day are comparable in all respects, including the generation of revenue, to the races held by that association on any other racing day.

ARTICLE 9. HORSE REGISTRATION; RACING

Sec. 9.01. TEXAS-BRED HORSES. The state horse breed registry shall make reasonable rules to establish the qualifications of accredited Texas-bred horses to promote, develop, and improve the breeding of horses in this state.

Sec. 9.02. BREED REGISTRIES. The officially designated state horse breed registries for accredited Texas-bred horses are the Texas Thoroughbred Breeders Association for Thoroughbred horses and the Texas Quarter Horse Association for quarter horses. Others shall be determined by the commission with the advice of the national breed registry.

Sec. 9.03. TEXAS-BRED RACE. An association shall provide for the running of races limited to accredited Texas-bred horses, each to be known as a Texas-bred race. On every racing day, an association shall provide for the running of at least two races limited to accredited Texas-bred horses. However, if on any day not enough starters are entered in this class to provide sufficient competition, an association may with the approval of the commission eliminate those races and provide substitute races. Any Texas-bred horse that is eligible under the conditions of the substitute race shall be preferred. To encourage the breeding of horses in this state, any accredited Texas-bred horse finishing first, second, or third in any race except a stakes race shall receive a purse supplement. The appropriate state breed registry shall act in an advisory capacity to the association for the purpose of administering the provisions of this section.

Sec. 9.04. FUNDS FOR AWARDS. Funds for the purse supplements shall be derived from the breakage as provided by Section 6.09 of this Act.

Sec. 9.05. TYPES OF RACING. When a horse-racing association runs both quarter horse and Thoroughbred races at one track, the number of races to be run by each breed shall be equal. The commission may by rule or by decision allow for exceptions if not enough horses of either breed are stabled on the grounds of a racetrack to provide sufficient competition.

Sec. 9.06. STABLING. If a horse-racing association conducts quarter horse and Thoroughbred racing on the same days, it shall provide stalls on an equitable basis as provided by rule of the commission.

Sec. 9.07. SECURITY. The horse-racing association shall provide security at its track that is considered by the commission to be equivalent or superior to that provided by the Thoroughbred Racing and Protective Bureau.

ARTICLE 10. ALLOCATION OF RACING DAYS—GREYHOUNDS

Sec. 10.01. NUMBER OF RACING DAYS. Any greyhound racing licensee shall be entitled to have 300 evening and 150 matinee performances in a calendar year.

Sec. 10.02. SUBSTITUTE RACING DAYS OR ADDITIONAL RACES. If for a reason beyond the licensee's control and not caused by the licensee's fault or

neglect it is impossible for the licensee to hold or conduct a race or races on a day authorized by the commission, the commission in its discretion and at the request of the licensee, as a substitute for the race or races, may specify another day for the holding or conducting of racing by the licensee or may add additional races to already programmed events.

Sec. 10.03. OTHER LAWFUL BUSINESSES. A licensee shall be allowed to conduct any other lawful business on the licensee's premises. The sale of alcoholic beverages in accordance with the Alcoholic Beverage Code is not prohibited on the licensee's premises.

Sec. 10.04. COOPERATION OF STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION. To facilitate the construction of the facilities described by this Act, the State Department of Highways and Public Transportation shall cooperate and aid a licensee to the extent possible.

ARTICLE 11. WAGERING

Sec. 11.01. PARI-MUTUEL WAGERING; RULES. The commission shall adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. Wagering may be conducted only by an association within its enclosure during a race meeting. The stewards employed by the commission are peace officers, and their primary duty is the enforcement of this Act. Each steward may exercise the authority of a peace officer to enforce any penal provision of law while in the course of that person's employment, if the steward is in, on, or about any greyhound racing or horse racing enclosure licensed under this Act. The commission's rules adopted under this section and this Act shall be written and updated to ensure their maximum enforceability within existing constitutional guidelines.

Sec. 11.02. TOTALIZATOR. The wagering may be operated only by a totalizator or other equipment that is approved by the commission. The commission may not require a particular make of equipment, but may give preference to equipment manufactured in this state.

Sec. 11.03. INFORMATION ON TICKET. The commission shall by rule prescribe the information to be printed on each pari-mutuel ticket.

Sec. 11.04. WAGERING INSIDE ENCLOSURE. Only a person inside the enclosure where a race meeting is authorized may wager on the result of a race by contributing money to the pari-mutuel pool operated by the association. The commission shall adopt rules to prohibit wagering by employees of the commission and to regulate wagering by persons licensed under this Act.

Sec. 11.05. UNLAWFUL WAGERING. A person may not wager on the result of a greyhound race or horse race in this state except as permitted by this Act.

Sec. 11.06. MINORS. The commission shall adopt rules to prevent wagering by persons who have not yet attained the minimum age required to purchase alcoholic beverages in this state and to prevent persons under 16 years of age from entering the viewing section of a racetrack unless accompanied by the person's parent or legal guardian.

Sec. 11.07. CLAIM AFTER RACE MEETING. (a) A person who claims to be entitled to any part of a redistribution from a pari-mutuel pool and who fails to claim the money due the person before the completion of the race meeting at which the pool was formed may, not later than the 60th day after the closing day of the meeting, file the following with the commission:

(1) a verified claim on a form prescribed by the commission; and

(2) a substantial portion of the pari-mutuel ticket sufficient to identify the association, race, and greyhound or horse involved and sufficient to show the amount wagered and the type of ticket (win, place, or show).

(b) If the claimant satisfactorily establishes a right to redistribution from the pool, the commission shall order the association to pay the amount due the claimant.

Sec. 11.08. REDISTRIBUTABLE MONEY NOT CLAIMED. Not later than the 90th day after the closing day of a race meeting, a horse racing association shall pay to the commission all redistributable money in a pari-mutuel pool that is subject to payment to a claimant under Section 11.07 of this Act but that is not successfully claimed and that is not spent on drug testing under the provisions of this Act.

Sec. 11.09. EXOTIC WAGERING PROHIBITED. The commission shall prohibit exotic wagering. Exotic wagering is defined as wagering that relates to the exact position or finish of more than one animal in any one race.

ARTICLE 12. FAIRS, STOCK SHOWS, AND EXPOSITIONS

Sec. 12.01. COUNTY STOCK SHOWS. Subject to the licensing requirements and other provisions of this Act, a county may conduct an annual race meeting, not to exceed 16 racing days, in connection with a livestock show or exhibit that is held under Chapter 20, Acts of the 43rd Legislature, 4th Called Session, 1934 (Article 2372d, Vernon's Texas Civil Statutes), or Chapter 411, Acts of the 51st Legislature, Regular Session, 1949 (Article 2372d-2, Vernon's Texas Civil Statutes). The race meetings may be conducted by an agent selected by the commissioners court under Chapter 49, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372d-3, Vernon's Texas Civil Statutes), if the agent is qualified to hold a license under this Act. This Act does not prohibit a county from exercising any right otherwise granted to any person by this Act.

Sec. 12.02. FAIRS. Subject to the licensing requirements and other provisions of this Act, a nonprofit corporation organized under Subdivision 7, Article 1302, Revised Statutes, or organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), for the same purposes may conduct a race meeting, not to exceed 16 racing days.

ARTICLE 13. EXCLUSION OR EJECTION FROM RACETRACK

Sec. 13.01. REGULATION BY COMMISSION. The commission shall adopt rules providing for the exclusion or ejection from an enclosure where greyhound races or horse races are conducted, or from specified portions of an enclosure, of a person:

(1) who has engaged in bookmaking, touting, or illegal wagering;

(2) whose income is from illegal activities or enterprises;

(3) who has been convicted of a violation of this Act;

(4) who has been convicted of theft;

(5) who has been convicted under the penal law of another jurisdiction for the commission of an act that would have constituted a violation of any of the laws mentioned in this section;

(6) who has committed a corrupt or fraudulent act in connection with greyhound racing or horse racing or pari-mutuel wagering, or who has committed any act tending or intended to corrupt greyhound racing or horse racing or pari-mutuel wagering in this state or elsewhere;

(7) who is under suspension or ruled off of a racetrack by the commission or a steward in this state or by a corresponding authority in another state because of fraudulent or corrupt practices or other acts detrimental to racing;

(8) who has submitted a forged pari-mutuel ticket or has altered or forged a pari-mutuel ticket for cashing or who has cashed or caused to be cashed an altered, raised, or forged pari-mutuel ticket;

(9) who has been convicted of committing a lewd or lascivious act or other crime involving moral turpitude;

(10) who is guilty of boisterous or disorderly conduct while inside a racing enclosure;

(11) who is an agent or habitual associate of a person excludable under this section; or

(12) who has been convicted of a felony.

Sec. 13.02. HEARING; APPEAL; EXCLUSION OR EXPULSION FROM AN ENCLOSURE. (a) A person who is excluded or ejected from an enclosure under a rule of the commission may apply to the commission for a hearing on the question of the applicability of the rule to that person.

(b) The commission shall hold the hearing not later than the 10th day after receipt of the application or at another time and place agreed on by the applicant and the commission.

(c) If the commission determines that the rule does not or should not apply to the applicant, it shall make and enter an order to that effect in its minutes and shall notify each association of that fact. If the commission determines that the exclusion or ejection was proper under the rules, it shall make and enter an order to that effect in its minutes, and the person shall continue to be excluded from each association.

(d) The applicant may appeal an adverse decision of the commission by filing not later than the 30th day after the date of the decision a petition to set aside the decision in a district court of the county of his residence or in Travis County. The appeal is by trial de novo as that term is used in appeals from a justice court to a county court.

(e) The judgment of the court may be appealed as in other civil cases. The person appealing the commission's ruling under this article shall continue to be excluded from all enclosures in this state during the pendency of the appeal.

Sec. 13.03. ENTRY AFTER EJECTION. (a) A person who has been excluded or ejected from an enclosure under this article commits an offense if the person knowingly enters an enclosure of the same or other licensed racetrack unless the commission or a final judgment of a court has ordered that the rule does not apply to the person.

(b) An offense under this section is a Class A misdemeanor.

(c) The provisions of Section 7.22, Penal Code, imposing criminal responsibility on a corporation or association for an offense committed by its agent apply to conduct constituting an offense under this section that is performed by an agent of a corporation or association.

ARTICLE 14. TOUTING AND OTHER OFFENSES

Sec. 14.01. TOUTING. (a) A person commits an offense if, knowing the information is false, the person knowingly or intentionally conveys or offers to convey false information about a greyhound race or horse race to others for compensation.

(b) Except as provided by Subsection (c) of this section, an offense under this section is a felony of the third degree.

(c) An offense under this section is a felony of the second degree if:

(1) the actor knowingly represents that an official or employee of the commission or of an association or an owner, trainer, jockey, or other person licensed by the commission is the source of the information; or

(2) the actor previously has been finally convicted of an offense under this section; probation and deferred adjudication constitute a final conviction.

(d) The provisions of Section 7.22, Penal Code, imposing criminal responsibility on a corporation or association for an offense committed by its agent apply to conduct constituting an offense under this section that is performed by an agent of a corporation or association.

Sec. 14.02. UNLAWFUL USE OF CREDENTIAL. (a) A person commits an offense if the person knowingly or intentionally displays a license or credential that has been issued or purports to have been issued by the commission and represents that the person is the holder of the license or credential when the person knows that the license or credential is not issued to the person or if the person

impersonates in any way a person holding a license or credential issued by the commission.

(b) An offense under this section is a felony of the third degree.

(c) The provisions of Section 7.22, Penal Code, imposing criminal responsibility on a corporation or association for an offense committed by its agent apply to conduct constituting an offense under this section that is performed by an agent of a corporation or association.

Sec. 14.03. ILLEGAL INFLUENCE OF RACE OUTCOME. (a) The commission shall adopt rules prohibiting the illegal influencing of the outcome of a race, including but not limited to the use of medication, stimulants, or depressants to attempt to or to influence illegally the outcome of a race.

(b) The commission may require both prerace and postrace testing by urinalysis, saliva testing, or blood testing, by any combination of the three, or by any other testing method recognized by the racing industry, to determine whether such a drug, chemical, or other substance has been administered. On any positive test showing the presence of prohibited drugs, chemicals, or other substances, the animal shall be immediately disqualified and all persons who have administered or applied the drug, chemical, or other substance, or any electric device or spur, may be immediately suspended pending hearing by the stewards, with the right of appeal to the commission. Such a suspension may be stayed, in the discretion of the commission only, during the pendency of such appeal. The commission shall require that all urine samples be frozen and maintained for a period of one year in order to enable veterinarians and chemists to conduct follow-up tests to detect and identify prohibited drugs. All other specimens shall be maintained for testing purposes in the manner prescribed by the commission.

(c) The official licensed trainer of each such animal is deemed by law to be the absolute insurer that no prohibited drug, chemical, or other substance has been administered and shall be responsible to see that such a drug, chemical, or other substance is not administered.

(d) By applying for license under this Act, each jockey and apprentice jockey consents to both prerace and postrace search for the purpose of determining the presence of such a drug, chemical, or other substance, or of any electrical device or other device that might have the effect of unnaturally depressing, stimulating, or exciting any horse during a race.

(e) A person who knowingly violates a rule adopted under this section may be barred, either for a time period set by the commission or for life, from receiving any license under this Act, or may be barred for a time period set by the commission or for life from any premises licensed under this Act, or both.

(f) A person who knowingly violates a rule adopted under this section commits a felony of the third degree for the first offense and a felony of the second degree for a second or subsequent offense.

Sec. 14.04. ILLEGAL ACCESS. (a) A licensee who knowingly or intentionally allows a person to have access to an enclosure where races are conducted who has engaged in bookmaking, touting, or illegal wagering, whose income is from illegal activities or enterprises, or who has been convicted of a violation of this Act, commits an offense.

(b) An offense under this section is a felony of the third degree.

ARTICLE 15. GENERAL PENALTY PROVISIONS

Sec. 15.01. GENERAL PENALTY. If a specific penalty is not provided for a violation of a provision of this Act, then a person who violates such a provision commits a felony of the third degree.

Sec. 15.02. PERSON DEFINED. In each section of this Act prescribing a criminal offense, "person" has the meaning assigned by the Penal Code.

ARTICLE 16. LOCAL OPTION ELECTION

Sec. 16.01. CONDITION PRECEDENT. The commission may not issue a horse-racing or greyhound-racing racetrack license, or accept an application for a license for a horse-racing or greyhound-racing racetrack to be located in a county until the commissioners court has certified to the secretary of state that the qualified voters of the county have approved the legalization of pari-mutuel wagering on the applicable type of races in the county at an election held under this article. A local option election may not be held under this article before November 5, 1985.

Sec. 16.02. COUNTIES THAT MAY HOLD LOCAL OPTION GREYHOUND RACING ELECTION—LIMITATION. Only in counties having a population of more than 190,000, according to the most recent federal census, that border the Gulf of Mexico, may the commissioners court call an election in accordance with this Act to determine whether a greyhound racing location with pari-mutuel wagering may be licensed to operate in the county. Only the registered voters of that county may vote on the question.

Sec. 16.03. METHODS FOR INITIATING ELECTION. The commissioners court on its own motion by a majority vote of its members may order an election to approve the legalization of pari-mutuel wagering on greyhound races, or on horse races, and it shall order an election on presentation of a petition meeting the requirements of this article.

Sec. 16.04. APPLICATION FOR PETITION; ISSUANCE. If petitioned to do so by written application of 50 or more registered voters of the county, the county clerk shall issue to the applicants a petition to be circulated among registered voters for their signatures.

Sec. 16.05. CONTENTS OF APPLICATION—HORSE RACING. To be valid, an application for a local option election on the legalization of pari-mutuel wagering on horse racing must contain:

(1) a heading, in the following words: "Application for a Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Horse Races";

(2) a statement of the issue to be voted on, in the following words: "Legalizing pari-mutuel wagering on horse races in _____ County";

(3) a statement immediately above the signatures of the applicants, reading as follows: "It is the hope, purpose, and intent of the applicants whose signatures appear below that pari-mutuel wagering on horse races be legalized in _____ County"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

Sec. 16.06. CONTENTS OF PETITION—HORSE RACING. To be valid, a petition for a local option election on the legalization of pari-mutuel wagering on horse racing must contain:

(1) a heading, in the following words: "Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Horse Races";

(2) a statement of the issue to be voted on, in the same words used in the application;

(3) a statement immediately above the signatures of the petitioners, reading as follows: "It is the hope, purpose, and intent of the petitioners whose signatures appear below that pari-mutuel wagering on horse races be legalized in _____ County";

(4) lines and spaces for the names, signatures, addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the county clerk on each page.

Sec. 16.07. CONTENTS OF APPLICATION—GREYHOUND RACING. To be valid, an application for a local option election on the legalization of pari-mutuel wagering on greyhound racing must contain:

(1) a heading, in the following words: "Application for a Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Greyhound Races";

(2) a statement of the issue to be voted on, in the following words: "Legalizing pari-mutuel wagering on greyhound races in _____ County";

(3) a statement immediately above the signatures of the applicants, reading as follows: "It is the hope, purpose, and intent of the applicants whose signatures appear below that pari-mutuel wagering on greyhound races be legalized in _____ County"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

Sec. 16.08. CONTENTS OF PETITION—GREYHOUND RACING. To be valid, a petition for a local option election on the legalization of pari-mutuel wagering on greyhound racing must contain:

(1) a heading, in the following words: "Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Greyhound Races";

(2) a statement of the issue to be voted on, in the same words used in the application;

(3) a statement immediately above the signatures of the petitioners, reading as follows: "It is the hope, purpose, and intent of the petitioners whose signatures appear below that pari-mutuel wagering on greyhound races be legalized in _____ County";

(4) lines and spaces for the names, signatures, addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the county clerk on each page.

Sec. 16.09. COPIES. The county clerk shall keep the application and a copy of the petition in his files. He shall issue to the applicants as many copies as they request.

Sec. 16.10. FILING OF PETITION; NUMBER OF SIGNATURES. To form the basis for the ordering of an election, a petition must be filed with the county clerk not later than the 30th day after the date of its issuance, and it must contain a number of signatures of registered voters of the county equal to five percent of the number of votes cast in the county for all candidates for governor in the most recent gubernatorial general election.

Sec. 16.11. REVIEW BY COUNTY CLERK. (a) The county clerk shall, on request of any person, check each name on a petition to determine whether the signer is a registered voter of the county. The person requesting this verification by the county clerk shall pay the county clerk a sum equal to 20 cents per name prior to commencement of the verification.

(b) The county clerk may not count a signature if there is reason to believe that:

(1) it is not the actual signature of the purported signer;

(2) the voter registration certificate number is not correct;

(3) it is a duplication either of a name or of handwriting used in any other signature on the petition;

(4) the residence address of the signer is not correct; or

(5) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

Sec. 16.12. CERTIFICATION. Not later than the 40th day after the date the petition is filed, excluding Saturdays, Sundays, and legal holidays, the county clerk shall certify to the commissioners court the number of registered voters signing a petition.

Sec. 16.13. ORDER OF ELECTION. (a) The commissioners court shall record on its minutes the date a petition is filed and the date it is certified by the county clerk.

(b) If the petition contains the required number of signatures and is in proper order, the commissioners court shall, at its next regular session after the certification by the county clerk, order an election to be held at the regular polling place in each county election precinct in the county on the next uniform election date authorized by Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), that occurs at least 20 days after the date of the order. The commissioners court shall state in the order the issue to be voted on in the election. The order is prima facie evidence that all provisions necessary to give it validity have been complied with.

Sec. 16.14. APPLICATION OF ELECTION CODE. (a) The election shall be held and the returns and canvass made in conformity with the Texas Election Code.

(b) The ballots shall be printed to permit voting for or against the appropriate proposition:

(1) "Legalizing pari-mutuel wagering on horse races in _____ County"; or

(2) "Legalizing pari-mutuel wagering on greyhound races in _____ County."

Sec. 16.15. RESULTS OF ELECTION. (a) If a majority of the votes cast in the election are for the legalization of pari-mutuel wagering on races in the county, the commissioners court shall certify that fact to the secretary of state not later than the 10th day after the date of the canvass of the returns.

(b) No other election may be held in the county under this Act until five years have elapsed since the date of the election.

Sec. 16.16. CONTEST OF ELECTION. (a) Not later than the 30th day after the date the result of the election is declared, any qualified voter of the county may contest the election by filing a petition in the district court of the county. Any person who is licensed or who has made application to the commission to be licensed in any capacity under this Act may become a named party to the proceedings by pleading to the petition on or before the time set for hearing and trial as provided by Subsection (c) of this section or thereafter by intervention on leave of court.

(b) The proceedings in the suit shall be conducted in the manner prescribed by Chapter 9, Texas Election Code (Article 9.01 et seq., Vernon's Texas Election Code), for contesting an election held for a purpose other than the election of an officer or officers. Unless otherwise provided by this Act, the applicable Texas Rules of Civil Procedure and all applicable statutes govern the proceedings and appeals held and conducted pursuant to this Act.

(c) At or after the time for hearing and trial, the judge shall proceed to hear and determine all questions of law and fact in the proceedings and may enter orders as to the proceedings that will enable him properly to try and determine the questions and to render a final judgment with the least possible delay.

Sec. 16.17. CONTEST OF ELECTION; BOND. At any time prior to the entry of a final judgment in the proceedings, any party may ask the court to dismiss the contestant's action unless the contestant posts a bond with sufficient surety, approved by the court, payable to the movant for the payment of all damages and costs that may accrue by reason of the delay that will be occasioned by the continued participation of the contestant in the proceedings in the event that the contestant fails to finally prevail and obtain substantially the judgment prayed for in the

petition. The court shall then issue an order directed to the contestant, which order, together with a copy of the motion, shall be served on all parties, or on their attorney of record, personally or by registered mail, requiring the contestant to appear at the time and place, not sooner than five nor later than 10 days after receipt of the order and motion, as the court may direct, and show cause why the motion should not be granted. The maximum bond that the court has authority to set is $10,000 for contests of elections for tracks to be located in a county with a population of less than 900,000, according to the most recent federal census. The maximum bond that the court has authority to set is $100,000 for contests of elections for tracks to be located in a county with a population of 900,000 or more, according to the most recent federal census. Motions with respect to more than one contestant may be heard together if so directed by the court. Unless at the hearing on the motion the contestant establishes facts that in the judgment of the court would entitle the contestant to a temporary injunction against the issuance of licenses on the basis of the election in question, the court shall grant the motion of the movant and in its order the court shall fix the amount of the bond to be posted by the contestant in an amount found by the court to be sufficient to cover all damages and costs that may accrue by reason of the delay that will be occasioned by the continued participation of the contestant in the proceedings in the event that the contestant fails to prevail and obtain substantially the judgment prayed for in its petition.

Sec. 16.18. CONTEST OF ELECTION; APPEAL. Any party to the cause who is dissatisfied with any order or judgment entered pursuant to Section 16.16 of this Act may appeal to the appropriate court of appeals after the entry of the order or judgment; otherwise the order or judgment becomes final. If no suit is instituted within 30 days after the result of the election is declared, it is presumed that the election is valid. Any appeal has priority over all other cases, causes, or matters pending in the court of appeals, except habeas corpus, and the court of appeals shall assure the priority and act on the matter and render its final order or judgment with the least possible delay. The supreme court may review by writ of error or other authorized procedure all questions of law arising out of the orders and judgments of the court of appeals in the manner, time, and form applicable in other civil causes in which a decision of the court of appeals is not final, but the review has priority over all other cases, causes, or matters pending in the supreme court, except habeas corpus, and the supreme court shall assure the priority and review and act on the matter and render its final order or judgment with the least possible delay.

Sec. 16.19. SUIT TO HAVE PRECEDENCE. The court shall accelerate the disposition of any action brought under this Act.

Sec. 16.20. CONTESTEE. The county attorney is the contestee of a suit brought under Section 16.16 of this Act. If there is no county attorney of the county, then the criminal district attorney or district attorney is the contestee.

ARTICLE 17. STATEWIDE REFERENDUM

Sec. 17.01. REFERENDUM. At the general election for state and county officers to be held November 5, 1985, the voters shall be permitted to vote in a referendum on the question of whether the state should regulate pari-mutuel wagering on a county-by-county local option basis pursuant to this Act.

Sec. 17.02. BALLOT PROPOSITION—LEGALIZATION OF PARI-MUTUEL WAGERING. The ballot shall be printed to provide for voting for or against the proposition: "The legalization of pari-mutuel wagering on a county-by-county local option basis pursuant to the Texas Racing Act."

Sec. 17.03. FORM OF BALLOT. The proposition shall be printed on the ballot beneath the proposed constitutional amendments under the heading: "Referendum Proposition."

Sec. 17.04. ELECTION PROCEDURE. (a) Notice of the election shall be given by inclusion of the proposition in the proclamation by the governor ordering

the election on the proposed amendments to the state constitution and in the notice of that election given by each county judge.

(b) Returns of the votes cast on the proposition shall be made and canvassed in the same manner as the returns on the proposed constitutional amendments.

(c) Immediately after the results of the election are certified by the State Board of Canvassers, the secretary of state shall transmit a copy of the certification to the lieutenant governor and the speaker of the house of representatives.

Sec. 17.05. EFFECT OF ELECTION. Licenses may not be issued under this Act, members of the commission may not be appointed, and pari-mutuel wagering may not be conducted under this Act if a majority of the votes received in the referendum under this article vote against the proposition.

Sec. 17.06. CONSTRUCTION OF ACT. The rule of construction stated in Section 3.12, Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes), applies to the construction of this Act, including the inclusion of this article as a part of this Act.

ARTICLE 18. MISCELLANEOUS PROVISIONS

Sec. 18.01. APPLICATION OF SUNSET ACT. The Texas Racing Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished, and this Act expires effective September 1, 1997.

Sec. 18.02. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Except as otherwise provided by this Act, the commission rules and orders are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 15. Chapter 47, Penal Code, is amended by adding Section 47.11 to read as follows:

Sec. 47.11. PARI-MUTUEL WAGERING ON CERTAIN RACES. It is a defense to prosecution for an offense under this chapter that the conduct was authorized under the Texas Racing Act.

SECTION 16(a). Subsection (a), Section 42.11, Penal Code, is amended to read as follows:

(a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; ~~or~~

(6) causes one animal to fight with another; or

(7) uses a live animal as a lure in dog race training or in dog coursing on a racetrack.

(b) This Section takes effect September 1, 1985.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

POINT OF ORDER

Senator Traeger raised the Point of Order that the amendment was not germane to the bill.

Senator Jones raised the Point of Order that the amendment contained material that previously failed to pass in the House of Representatives.

Senator Leedom raised the Point of Order that the amendment would create a new tax measure.

The President considered all Points of Order and sustained the Point of Order that the amendment was not germane to the bill.

On motion of Senator Traeger and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1843 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1843** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 16, Relating to application of width regulations to certain vehicles traveling on public highways.

S.B. 169, Relating to amendment of an indictment or information and to waiver of the defendant's right to object to a defect, error, or irregularity in an indictment or information.

S.B. 574, Relating to the punishment for first degree felony offenders who are repeat offenders.

S.B. 469, Relating to the composition of a county bail bond board. (Amended)

S.B. 465, Relating to the creation of certain judicial districts and to the jurisdiction of the 360th District Court. (Amended)

S.B. 108, Relating to the disposition of the proceeds, and the interest on the proceeds, from the sale of a county hospital.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 267 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 267, Relating to authorizing movable stop arms on school buses.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Amend **H.B. 267** by adding the following language and renumbering accordingly:

SECTION 1. "(b) In addition to the signal lamps required by Section 124 of this Act, a school bus may be equipped with rooftop warning lamps that conform to and are placed on the bus in accordance with specifications adopted under Subsection (a) of this section. The warning lamps may be operated only during inclement weather when the bus [~~It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus~~] is being stopped or is stopped on a highway for the purpose of permitting school children to board or alight from the [~~said~~] school bus.

SECTION 2. Subsections (c) and (e), Section 131, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Flashing lights are prohibited except as authorized or required in Sections 105, 122, 124, 125 and 131.

(e) It shall be unlawful to operate any flashing warning signal light on any school bus except when the [~~any said~~] school bus is being stopped or is stopped on a highway for the purpose of permitting school children to board or alight from the [~~said~~] school bus."

The amendment was read and was adopted.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 267 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 267** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 309 ON SECOND READING

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 309, Relating to court costs imposed to generate funds for victims of crime and for funding of local crime stoppers programs.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Amend **C.S.H.B. 309** by striking the current SECTION 2 and inserting the following SECTIONS 2, 3, 4, 5, 6, and 7, and renumbering the remaining SECTIONS accordingly:

SECTION 2. JUDICIAL AND COURT PERSONNEL TRAINING FUND. (a) The Judicial and Court Personnel Training Fund is created in the State Treasury and shall be administered by the Supreme Court.

(b) In addition to other court costs, a person shall pay $1 as a court cost on conviction of any criminal offense, including cases in which probation or deferred adjudication is granted. A conviction that arises under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), or a conviction under the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes) is included,

except that a conviction arising under any law that regulates pedestrians or the parking of motor vehicles is not included.

(c) Court costs due under this section shall be collected in the same manner as other fines or costs are collected in the case.

(d) The officer collecting the costs in municipal court shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the municipal treasury.

(e) The officer collecting the costs and fees in justice, county, and district courts shall keep separate records of the funds collected under this section and shall deposit the funds in the county treasury.

(f) Each officer collecting court costs under this section shall file the reports required under Articles 944 and 945, Code of Criminal Procedure, 1925 (Articles 1001 and 1002, Part II, Vernon's Texas Code of Criminal Procedure, 1965). If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report must state that no funds under this section were collected.

(g) The custodians of municipal and county treasuries shall keep records of the amount of funds on deposit collected under this section and shall send to the comptroller of public accounts not later than the last day of the month following each calendar quarter the funds collected under this section during the preceding quarter. The municipality or county may retain as a collection fee 10 percent of the funds collected under this section. Funds collected are subject to audit by the comptroller and funds expended are subject to audit by the State Auditor.

(h) The comptroller shall deposit the funds received under this section in the Judicial and Court Personnel Training Fund.

(i) On requisition of the supreme court, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in SECTION 6 of this Act. A warrant may not exceed the amount appropriated for any one fiscal year. At the end of each state fiscal year, any unexpended balance in the fund in excess of $500,000 shall transferred to the General Revenue Fund."

SECTION 3. FEES COLLECTED BY CLERKS OF COURTS OF APPEALS. Fifty percent of the fees collected by the clerks of the courts of appeals under Article 3924, Revised Statutes, as amended, shall be deposited in the State Treasury in the Judicial and Court Personnel Training Fund for the continuing legal education of judges and of court personnel.

SECTION 4. REPEALER. (a) Sections 2 and 3, Chapter 644, Acts of the 68th Legislature, Regular Session, 1983, are repealed.

(b) Chapter 418, Acts of the 65th Legislature, Regular Session, 1977, as amended (Article 1200f, Vernon's Texas Civil Statutes), is repealed.

SECTION 5. TRANSFER OF FUNDS. (a) Any unexpended funds in the municipal court judges and personnel training fund shall not be paid into the General Revenue Fund but shall be deposited to the credit of the Judicial and Court Personnel Training Fund on the effective date of this Act.

(b) Any unexpended funds in the special fund created by Section 2, Chapter 644, Acts of the 68th Legislature, Regular Session, 1983, for the continuing education of the justices and staff of the courts of appeals shall be deposited to the credit of the Judicial and Court Personnel Training Fund on the effective date of this Act.

SECTION 6. APPROPRIATION. (a) There is hereby appropriated out of the Judicial and Court Personnel Training Fund $2.1 million for the period beginning September 1, 1985, and ending August 31, 1986, and $2.1 million for the period beginning September 1, 1986, and ending August 31, 1987.

(b) The supreme court may devote no more than three percent of the monies appropriated in any one fiscal year to hire staff and provide for the proper administration of the Act.

(c) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of appellate courts, district courts, county courts at law, and county courts performing judicial functions as required by Chapter 344, Acts of the 68th Legislature, Regular Session, 1983 (Article 5966b, Vernon's Texas Civil Statutes), and of their court personnel.

(d) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of justice courts as required by Chapter 344, Acts of the 68th Legislature, Regular Session, 1983 (Article 5966b, Vernon's Texas Civil Statutes), and of their court personnel.

(e) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of municipal courts as required by Chapter 344, Acts of the 68th Legislature, Regular Session, 1983 (Article 5966b, Vernon's Texas Civil Statutes), and their court personnel.

(f) The supreme court shall grant legal funds to statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs, and projects for judges and court personnel. The grantees of such funds must ensure that sufficient funds are available for each judge to meet the minimum educational requirements of Chapter 344, Acts of the 68th Legislature, Regular Session, 1983 (Article 5966b, Vernon's Texas Civil Statutes), before any funds are awarded to a judge for education that exceeds those requirements.

SECTION 7. This Act takes effect September 1, 1985. A court cost imposed on a conviction under SECTIONS 1 or 2 of this Act applies to a conviction occurring on or after September 1, 1985.

The amendment was read and was adopted.

On motion of Senator Mauzy and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 309 ON THIRD READING

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 309** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1321, Relating to alternative systems established by counties for resolving citizen disputes; amending Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes),... (Amended)

S.B. 1344, Relating to medical malpractice coverage for certain institutions; defining medical staff or students.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 802 ON SECOND READING

On motion of Senator Traeger and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 802, Providing for payment of assistance to surviving dependent parents, brothers, and sisters of certain public servants killed while on duty.

The bill was read second time and was passed to third reading.

HOUSE BILL 802 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 802** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

SENATE RULE 74a SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 105**.

SENATE BILL 105 WITH HOUSE AMENDMENTS

Senator Caperton called **S.B. 105** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Bush

Amend **S.B. 105**, SECTION 18, by adding new language at the end of Section 5b. after the words "stipulated in Section 5a of this Act." new language to read as follows:

(a) When a judge is assigned under this Act the presiding judge shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge.

(b) If a party to a civil case files a timely objection to the assignment, the judge is disqualified to hear the case.

(c) An objection under this section must be filed before the first hearing or trial, including pre-trial hearings, over which the assigned judge is to preside.

Floor Amendment No. 2 - Adkisson

Amend **S.B. 105** by adding the following Section 28(d) after Section 28 (c) following line 8 on page 70:

SECTION 28(d) Article 1821, Revised Statutes, is amended to read as follows:

Art. 1821. JUDGMENT CONCLUSIVE OF LAW. Except as herein otherwise provided, the judgments of the Courts of Appeals in civil cases shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to wit:

1. Any civil case appealed from the County Court or from a District Court, when, under the Constitution a County Court would have had original or appellate jurisdiction to try it, except in probate matters, and in cases involving the Revenue Laws of the State or the validity or construction of a Statute.

2. All cases of slander.

3. [~~All cases of divorce or child custody, support, or reciprocal support.~~

[~~04.~~] All cases of contested elections of every character other than for State officers, except where the validity of a Statute is questioned by the decision.

4. [~~05.~~]. In all appeals from interlocutory orders appointing receivers or trustees, or such other interlocutory appeals as may be allowed by law.

5. [~~6.~~] In all appeals from orders or judgments in suits where a temporary injunction has been granted or refused or when a motion to dissolve has been granted or overruled.

6. [~~7.~~] In all other cases as to law and facts except where appellate jurisdiction is given to the Supreme Court and not made final in said Courts of Appeals.

It is provided, however, that nothing contained herein shall be construed to deprive the Supreme Court of jurisdiction of any civil case brought to the Court of Appeals from an appealable judgment of the trial court in which the judges of the Courts of Appeals may disagree upon any question of law material to the decision, or in which one of the Courts of Appeals holds differently from a prior decision of another Court of Appeals or of the Supreme Court upon a question of law, as provided for in Subdivisions (1) and (2) of Article 1728.

SECTION This Act applies only to judgments in cases of divorce, child custody, support, or reciprocal support that become final on or after the effective date of this Act. A judgment rendered in a case of divorce, child custody, support, or reciprocal support that became final before the effective date of this Act is governed by Article 1821, Revised Statutes, as it existed at the time the judgment was rendered, and that law is continued in effect for that purpose.

SECTION The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendments were read.

Senator Caperton moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 105** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Blake, Farabee, McFarland and Traeger.

SENATE RULE 74a SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 1455**.

SENATE BILL 1455 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 1455** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

SECTION 1. Chapter 659, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413a.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. (a) On [~~Upon~~] the filing of any petition [~~pleading~~] in a civil case in which the State of Texas or any agency in the executive or legislative department is named as a party or in which Chapter 309, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), requires the attorney general of this state to represent a party, the petitioner [~~Attorney General of Texas~~] shall [~~be served~~] promptly mail [~~with~~] a true copy of the petition to the attorney general [~~such pleading~~] at his office in Austin, Texas, by U.S. Postal Service, certified mail, return receipt requested.

(b) The requirement in Subsection (a) of this section does not satisfy any other jurisdictional requirements with regard to service of process on [~~upon~~] a state officer, board, commission, agency, or institution that is named as a party in a court proceeding.

Sec. 2. Notice of intent to take a default judgment against the State of Texas, [~~or~~] any state agency, or a party in a civil case in which Chapter 309, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), requires representation by the attorney general shall be mailed to [~~served upon~~] the attorney general at his office in Austin, Texas, by U.S. Postal Service, certified mail, return receipt requested, at least 10 days before a request for entry of a default judgment is made [~~prior to the date of the proposed default judgment~~].

Sec. 3. Failure to perform the requirements of Section 1 or Section 2 renders [~~shall render~~] any default judgment against the State of Texas, [~~or~~] such a state agency, or a party in such a civil case voidable if the attorney general proves that he did not receive notice of the existence of the action [~~agencies void~~].

SECTION 2. This Act applies only to petitions filed on or after the effective date of this Act. A pleading filed before the effective date of this Act is governed by Chapter 659, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413a.1, Vernon's Texas Civil Statutes), as it existed on the date the pleading was filed, and that law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Farabee moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1455** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Farabee, Chairman; Caperton, Mauzy, Traeger and Washington.

HOUSE BILL 2509 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2509, Relating to requirements for filing fees and signature petitions in the general primary election for certain judicial offices.

The bill was read second time and was passed to third reading.

HOUSE BILL 2509 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2509** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

COMMITTEE SUBSTITUTE HOUSE BILL 1330 ON SECOND READING

Senator Uribe asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1330, Relating to state and local regulation of outdoor signs.

There was objection.

Senator Uribe then moved to suspend the regular order of business and take up **C.S.H.B. 1330** for consideration at this time.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Williams.

Nays: Barrientos, Mauzy, Montford, Washington, Whitmire.

The bill was read second time.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1330** by striking all below the enacting clause and substituting the following:

ARTICLE 1

SECTION 1. LEGISLATIVE INTENT. (a) This article is not intended to require a municipality to provide for the relocation, reconstruction, or removal of any sign in the municipality, nor is it intended to prohibit a municipality from requiring the relocation, reconstruction, or removal of any sign. This article is intended only to authorize a municipality to take that action and to establish the procedure by which the municipality may do so.

(b) This article is not intended to require a municipality to make a cash payment to compensate the owner of a sign that the municipality requires to be relocated, reconstructed, or removed. Cash payment is established as only one of several methods from which a municipality may choose in compensating the owner of a sign.

(c) This article is not intended to affect any eminent domain proceeding in which the taking of a sign is only an incidental part of the exercise of the eminent domain power.

SECTION 2. DEFINITIONS. In this article:

(1) "Sign" means an outdoor structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform.

(2) "On-premise sign" means a freestanding sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity.

(3) "Off-premise sign" means a sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

(4) "Municipality" means an incorporated city, town, or village, including a home-rule city.

SECTION 3. MUNICIPAL BOARD. (a) If a municipality requires the relocation, reconstruction, or removal of a sign within its corporate limits or extraterritorial jurisdiction, the presiding officer of the governing body of the municipality shall appoint a municipal board on sign control. The board must be composed of the following persons:

(1) two persons who must be real estate appraisers registered with the Society of Real Estate Appraisers or the American Institute of Real Estate Appraisers;

(2) one person who must be engaged in the sign business in the municipality;

(3) one person who must be an employee of the State Department of Highways and Public Transportation and must be familiar with real estate valuations in eminent domain proceedings; and

(4) one person who must be an architect or a landscape architect licensed by this state.

(b) A member of the board is appointed for a term of two years.

(c) The board has the powers and duties given to it by this article.

SECTION 4. RELOCATION, RECONSTRUCTION, OR REMOVAL OF SIGN: COMPENSATION OF OWNER. (a) Subject to the requirements of this article, a municipality may require the relocation, reconstruction, or removal of any sign within its corporate limits or extraterritorial jurisdiction.

(b) The owner of a sign that is required to be relocated, reconstructed, or removed is entitled to be compensated by the municipality as provided by this section for costs associated with the relocation, reconstruction, or removal. The municipal board on sign control shall determine under this section the amount of the compensation. The determination shall be made after the owner of the sign is given the opportunity for a hearing before the board about the issues involved in the matter.

(c) For a sign that is required to be relocated, compensable costs include the expenses of dismantling the sign, transporting it to another site, and reerecting it, determined by the board according to the standards applicable in a proceeding under Chapter 21, Property Code. In addition, the municipality shall issue to the owner an appropriate permit or other authority to operate at an alternative site of substantially equivalent value a substitute sign of the same type and compensate the owner for any increased operating costs (including increased rent) at the new location. The owner is responsible for designating an alternative site where the erection of the sign would be in compliance with the sign ordinance. Whether an alternative site is of substantially equivalent value is determined by standards generally accepted in the outdoor advertising industry, including visibility, traffic count, and demographic factors.

(d) For a sign that is required to be reconstructed, compensable costs include expenses of labor and materials and any loss in the value of the sign in excess of 15 percent of that value due to the reconstruction, determined by the board according to standards applicable in a proceeding under Chapter 21, Property Code.

(e)(1) For an off-premise sign that is required to be removed, the compensable cost is an amount computed by determining the average annual gross revenue received by the owner from the sign during the two years immediately preceding September 1, 1985, or the two years immediately preceding the month in which the removal date of the sign occurs, whichever is less, and by multiplying that amount by three. If the sign has not been in existence for all of either two-year period, the average annual gross revenue for that period, for the purpose of this computation, is an amount computed by dividing 12 by the number of months that the sign has been in existence, and multiplying that result by the total amount of the gross revenue received for the period that the sign has been in existence. However, if the sign did not generate revenue for at least one month preceding September 1, 1985, this computation of compensable costs is to be made using only the average annual gross revenue received during the two years immediately preceding the month in which the removal date of the sign occurs, and by multiplying that amount by three. In determining the amounts under this paragraph, a sign is treated as if it were in existence for the entire month if it was in existence for more than 15 days of the month and is treated as if it were not in existence for any part of the month if it was in existence for 15 or fewer days of the month.

(2) For an on-premise sign that is required to be removed, the compensable cost is an amount computed by determining a reasonable balance between the original cost of the sign, less depreciation, and the current replacement cost of the sign, less an adjustment for the present age and condition of the sign.

(f) If an off-premise sign is required to be removed and the sign owner's compensable cost for the sign is to be determined under Subsection (e)(1) of this section, the owner of the real property on which the sign was located is entitled to be compensated for any decrease in the value of the real property. The compensable cost is to be determined by the board according to standards applicable in a proceeding under Chapter 21, Property Code.

(g) For each nonconforming sign, the board shall file with the appropriate property tax appraisal office the board's compensable costs value appraisal of the sign. The appraisal office shall consider the board's appraisal when the office, for property tax purposes, determines the appraised value of the real property to which the sign is attached.

SECTION 5. METHOD OF COMPENSATION. (a) In order to pay the compensable costs required under Section 4 of this article, the governing body of any municipality is authorized to utilize only the following methods prescribed by this section, or a combination of those methods.

(b) The municipality, acting pursuant to the Property Redevelopment and Tax Abatement Act (Article 1066f, Vernon's Texas Civil Statutes), may abate municipal property taxes that otherwise would be owed by the owner of a sign that is required to be relocated or reconstructed. The abated taxes may be on any real or personal property owned by the owner of the sign except residential property. The right to the abatement of taxes is assignable by the holder, and the assignee may use the right to abatement with respect to taxes on any nonresidential property in the same taxing jurisdiction. In any municipality where tax abatement is utilized in order to pay compensable costs, such costs shall include reasonable interest and such abatement period shall not exceed five years.

(c) The municipality may allocate all or any part of the municipal property taxes paid on signs, on the real property upon which the signs are located, or on other real or personal property owned by the owner of the sign to a special fund in the municipal treasury, to be known as the sign abatement and community beautification fund, and make payments from that fund to reimburse compensable costs to owners of signs required to be relocated, reconstructed, or removed.

(d) The municipality may provide for the issuance of sign abatement revenue bonds and use the proceeds to make payments to reimburse costs to the owners of

signs required to be relocated, reconstructed, or removed. The municipality may only use the proceeds from such bonds for the removal, relocation, or reconstruction of signs within the corporate limits of such municipality.

(e) The municipality may pay compensable costs in cash.

(f) In any proceeding in which the reasonableness of compensation is at issue and the compensation is to be provided over a period longer than one year, the court shall consider whether the duration of the period is reasonable under the circumstances.

(g) If application of a municipal regulation would require reconstruction of a sign in a manner that would make it ineffective for its intended purpose, such as by substantially impairing the sign's visibility, application of the regulation is treated as the required removal of the sign for purposes of this article.

(h) In lieu of paying compensation, a city may exempt from required relocation, reconstruction, or removal those signs lawfully in place on the effective date of the requirement.

SECTION 6. SPECIAL PROVISIONS FOR SIGNS UNDER SIGN ORDINANCE ON CERTAIN DATE. (a) If, on June 1, 1985, a municipality has in effect an ordinance requiring the relocation, reconstruction, or removal of any sign and if the ordinance provides for compensating a sign owner under an amortization plan, the compensation for a sign's relocation, reconstruction, or removal is to be determined under this section instead of under Section 4 of this article.

(b) The municipal board on sign control shall compile a list of the signs that, on September 1, 1985, are not in compliance with the sign ordinance. The board shall compile the list before December 1, 1985.

(c) Before December 15, 1985, the board shall have made a diligent effort to mail a written notice to the owner of each sign on the list. The notice must be sent through the United States Postal Service by certified or registered mail with return receipt requested. The notice must state that the sign is on the list of signs that are not in compliance with the sign ordinance, must describe the sign by general type and by location, and must describe the action that is required of the owner under Subsection (d) of this section. If either the identification of an owner of a sign on the list or the address of the owner cannot be determined by the board after the board has made a diligent effort to do so, the board, before December 15, 1985, shall cause a notice to be published in a newspaper of general circulation in the municipality. The newspaper notice must contain information similar to that required to be in the personal written notice.

(d) Before February 1, 1986, the owner of a sign that is on the list compiled by the board shall file with the board a record of the owner's signs that the owner determines can be brought into compliance with the sign ordinance at a cost of 15 percent or less of the value of the sign and also shall file another record of the signs that the owner determines cannot be brought into compliance at that cost. If an owner fails to timely file the required information about a sign, the board shall treat the sign as if the owner had recorded it as being able to be brought into compliance at a cost of 15 percent or less.

(e) Before March 15, 1986, the board shall verify the records filed with the board under Subsection (d) of this section. If the board questions an owner's determination made under Subsection (d), the board shall obtain three competitive bids regarding the cost at which the sign can be brought into compliance with the sign ordinance. After receiving the bids, the board may make its own determination regarding the sign. The verification, including any determination the board may make as authorized by this subsection, may be made only after the owner of the signs is given an opportunity for a hearing before the board about the issues involved in the matter. As part of the verification process the board shall appraise the value of the signs at compensable costs.

(f) Of an owner's signs that the board verifies can be brought into compliance at the cost of 15 percent or less, the board shall permit the owner to keep one-half of those signs as nonconforming uses and shall require the other one-half to be brought into compliance at no cost to the municipality. If an owner has more than one sign and the total number of signs is an odd number, the one additional sign that prevents an exact one-half division shall be added to the number of signs permitted as nonconforming uses. In making its determination of which signs to permit as nonconforming uses and which to require to be brought into compliance, the board shall consider the requests of the owner and shall consider other relevant factors, including factors such as geography, density, value, traffic flow, and cost of compliance.

(g) The signs that are required to be brought into compliance are subject to the following schedule:

(1) one-third of those signs must be brought into compliance before July 1, 1986;

(2) another one-third of those signs must be brought into compliance before July 1, 1987; and

(3) the remaining one-third must be brought into compliance before July 1, 1988.

(h) For signs that the board verifies cannot be brought into compliance at the cost of 15 percent or less, the board shall determine the entire useful life of those signs by type or category, such as the categories of mono-pole signs, metal signs, and wood signs. The useful life may not be solely determined by the natural life expectancy of a sign. For those signs, the governing body of the municipality may:

(1) permit the signs within the corporate limits of the municipality to be kept in place as nonconforming uses for a period computed by taking the entire useful life of the sign, subtracting from that useful life the period that the sign has been under the municipality's amortization plan, and multiplying that result by 65 percent;

(2) permit the signs within the extraterritorial jurisdiction of a municipality to be kept in place as nonconforming uses for a period computed by taking the entire useful life of the sign and multiplying that useful life by 65 percent; or

(3) pay the sign owner, by one of the methods described by Section 5 of this article, 65 percent of the compensable costs of the relocation, reconstruction, or removal of the sign, as those costs are determined under Section 4 of this article.

(i) For each nonconforming sign, the board shall file with the appropriate property tax appraisal office the board's compensable costs value appraisal of the sign. The board shall file the information on or before March 15, 1986. The appraisal office shall consider the board's appraisal when the office, for property tax purposes, determines in 1986 and later years the appraised value of the real property to which the sign is attached.

(j) If a sign is required to be removed and the sign owner is to be compensated under Subsection (h)(3) of this section, the owner of the real property on which the sign was located is entitled to be compensated for 65 percent of any decrease in the value of the real property. The compensable cost is to be determined by the board according to standards applicable in a proceeding under Chapter 21, Property Code. The governing body of the municipality may pay the owner by one of the methods described by Section 5 of this article.

SECTION 7. APPEAL. (a) Any person aggrieved by a decision of the board may present to a district court a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court not later than the 20th day after the day the decision is rendered by the board.

(b) Upon presentation of the petition, the court may allow a writ of certiorari directed to the board to review the decision of the board and shall prescribe in the

writ the time within which a return must be made, which may not be less than 10 days and may be extended by the court.

(c) The board is not required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies of the papers. The return must concisely set forth all other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(d) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(e) Costs may not be allowed against the board unless it shall appear to the court that the board acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

SECTION 8. EXCEPTIONS. (a) The requirements of this article do not apply to any sign that was erected in violation of local ordinances, laws, or regulations applicable at the time of its erection.

(b) The requirements of this article do not apply to a sign that, having been permitted to remain in place as a nonconforming use, is required to be removed by a municipality because the sign, or a substantial part of it, is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(c) For purposes of Subsection (b) of this section, a sign or substantial part of it is considered to have been destroyed only if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location.

(d) This article may not be construed to limit or restrict the compensation provisions of the highway beautification provisions contained in Article IV, Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes).

ARTICLE 2

SECTION 1. LEGISLATIVE INTENT. It is the intent of the legislature to promote and control the reasonable, orderly, and effective display of outdoor advertising on all highways and roads located outside the corporate limits of cities, towns, and villages in Texas to promote the recreational value of public travel, and to preserve natural beauty.

SECTION 2. DEFINITIONS. In this article:

(1) "Commission" means the State Highway and Public Transportation Commission.

(2) "Rural road" means a road, street, way, thoroughfare, or bridge that is located in an unincorporated area and is not privately owned or controlled, any part of which is open to the public for vehicular traffic, and over which the state or any of its political subdivisions have jurisdiction.

(3) "Sign" means an outdoor structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform and that is visible from the main-travelled way of a rural road.

(4) "On-premise sign" means a freestanding sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity.

(5) "Off-premise sign" means a sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

(6) "Person" means an individual, association, or corporation.

(7) "Portable sign" means a sign designed to be mounted on a trailer, bench, wheeled carrier, or other nonmotorized mobile structure.

SECTION 3. SPACING REQUIREMENTS. (a) An off-premise sign having a face area of 301 square feet or more may not be erected within 1,500 feet of another off-premise sign on the same side of the roadway.

(b) An off-premise sign having a face area of at least 100 but less than 301 square feet may not be erected within 500 feet of another off-premise sign on the same side of the roadway.

(c) An off-premise sign having a face area of less than 100 square feet may not be erected within 150 feet of another off-premise sign on the same side of the roadway.

(d) For purposes of this section, each double-faced, back-to-back, or V-type sign is treated as a single sign.

(e) Signs located at the same intersection are not in violation of this section because of their nearness to one another if they are located so that their messages are directed toward traffic flowing in different directions.

SECTION 4. HEIGHT RESTRICTIONS. An on-premise or off-premise sign may not be erected that exceeds an overall height of 42-1/2 feet, excluding cutouts extending above the rectangular border, measured from the highest point on the sign to the grade level of the roadway from which the sign is to be viewed. A roof sign having a tight or solid surface may not at any point exceed 24 feet above the roof level. Open roof signs in which the uniform open area is not less than 40 percent of total gross area may be erected to a height of 40 feet above the roof level. The lowest point on a projecting sign must be at least 14 feet above grade.

SECTION 5. FACE RESTRICTIONS. An on-premise sign, other than an on-premise wall sign, may not be erected that has a face area exceeding 400 square feet, including cutouts but excluding uprights, trim, and apron. An off-premise sign may not be erected that has a face area exceeding 672 square feet, excluding cutouts, uprights, trim, and apron. Neither an on-premise nor an off-premise sign may have a cutout with an area larger than 20 percent of the sign's surface copy area.

SECTION 6. DETERMINATION OF SIZE. For signs of a double-faced, back-to-back, or V-type nature, each face is considered a separate sign in computing the face area.

SECTION 7. WIND LOADS; LOCATION AND ANCHORING OF PORTABLE SIGNS. (a) Each on-premise or off-premise sign erected or sited must be designed to resist wind loads as follows:

WIND LOAD PRESSURES IN POUNDS PER SQUARE FOOT FOR ALL SIGNS

Height, in feet above ground, as measured above the average level of the ground adjacent to the structure	Pressure, pounds per square foot
0 - 5	0
6 - 30	20
31 - 50	25
51 - 99	35
100 - 199	45
200 - 299	50
300 - 399	55
400 - 500	60
501 - 800	70
Over 800	77

(b) A person may not place a portable sign on property of another without first obtaining written permission from the owner or the owner's authorized agent.

SECTION 8. NUMBER OF ON-PREMISE SIGNS. A business may not maintain more than five on-premise signs per each frontage on a single rural road at a single business location.

SECTION 9. ADMINISTRATION OF ARTICLE; RULEMAKING. (a) The commission shall administer and enforce this article and shall adopt rules to regulate the erection or maintenance of signs covered under this article. The commission shall adopt rules specifying the time for and manner of applying for a permit, the form of the permit application, and the information that must be included in a permit application.

(b) The commission by rule may require every applicant for a permit to file with the commission a surety bond or other security in a reasonable amount and payable to the commission to reimburse it for the cost of removing a sign unlawfully erected or maintained by a permittee. A rule adopted under this section must provide for exemption from the requirement of furnishing a bond or security for an applicant who has held five or more permits under this article for at least one year and has not violated this article or a rule adopted under this article during the preceding 12-month period. Any person engaged primarily in the business of erecting signs that advertise companies located or products sold on the premises on which the signs are erected must file with the commission a surety bond in the amount of at least $100,000 and payable to the commission to reimburse it for the cost of removing a sign unlawfully erected or maintained by the person; a person may not be exempted from this requirement.

(c) The commission may revoke a permit issued under this article if the permittee:

(1) violates any provision or requirement of this article; or

(2) violates a commission rule adopted under this article.

(d) A person whose permit is revoked may appeal the revocation to a district court in Travis County. The appeal must be taken not later than the 15th day after the date of the commission's action.

(e) The commission shall issue a permit to a person whose application complies with the commission's rules and whose sign, if erected, would comply with the requirements of this article.

(f) The commission shall provide for a board of variance which may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the provisions of this article.

SECTION 10. PERMIT FOR ERECTION OF SIGN. A person may not erect an off-premise sign that is visible from the main-travelled way of a rural road without having first obtained a permit from the commission. A permit issued under this section is valid for one year. The commission by rule shall prescribe fees for the issuance of permits in amounts determined by the commission to be sufficient to enable the commission to recover the costs of enforcement of this article. Fees collected under this section shall be deposited in the state treasury and may be used only for the enforcement of this article. Except as authorized pursuant to this Act, no permit may be issued for an off-premise sign unless such sign is to be located within 800 feet of one or more recognized commercial or industrial business activities and located on the same side of the roadway as such business.

SECTION 11. REPLACEMENT OR REPAIR OF SIGN. (a) When any sign, or a substantial part of it, is blown down or otherwise destroyed or taken down or removed for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign, it may not be reerected, reconstructed, or rebuilt except in full conformance with the provisions and requirements of this article.

(b) For purposes of Subsection (a) of this section, a sign or substantial part of it is considered to have been destroyed only if the cost of repairing the sign is more

than 50 percent of the cost of erecting a new sign of the same type at the same location.

SECTION 12. EXEMPTIONS. (a) The following are exempt from this article:

(1) a sign the erection and maintenance of which is allowed under the highway beautification provisions contained in Article IV, Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes);

(2) a sign in existence before the effective date of this article;

(3) a sign that has as its purpose the protection of life and property;

(4) a directional or other official sign authorized by law, including a sign pertaining to natural wonders or scenic or historic attractions;

(5) a sign or marker giving information about the location of underground electric transmission lines, telegraph or telephone properties and facilities, pipelines, public sewers, or waterlines;

(6) a sign erected by an agency of the state or a political subdivision of the state; and

(7) a sign erected solely for and relating to a public election, but only if:

(A) the sign is on private property;

(B) the sign is erected no sooner than the 60th day before the election and is removed no later than the 10th day after the election;

(C) the sign is constructed of lightweight material; and

(D) the surface area of the sign is not larger than 50 square feet.

(b) The following are exempt from the requirements of Section 5 of this article:

(1) signs advertising the sale or lease of property on which they are located; and

(2) on-premise wall signs.

(c) The exemption provided by Subsection (a)(2) of this section does not exempt a sign from Section 13 of this article to the extent that section applies.

SECTION 13. EXISTING OFF-PREMISE SIGNS. Not later than the 120th day after the effective date of this article each owner of an off-premise sign erected before the effective date of this article that is visible from the main-travelled way of a rural road shall either remove the sign or register the sign with the commission. The owner must pay a fee of $25 for each sign that is registered. This registration is valid for one year, but is renewable for an annual fee of $10 a sign, provided however, the commission may by regulation provide for a longer renewal period not to exceed five years.

SECTION 14. CIVIL AND ADMINISTRATIVE PENALTIES. (a) A person who intentionally violates this article or a rule adopted by the commission under this article is liable to the state for a civil penalty. The attorney general or a county or district attorney may sue to collect the penalty.

(b) The amount of the civil penalty is not less than $150 nor more than $1,000 for each violation, depending on the seriousness of the violation. A separate civil penalty may be collected for each day on which a continuing violation occurs.

(c) In lieu of a suit to collect a civil penalty, the commission may, after notice and an opportunity for hearing before the commission, assess an administrative penalty against a person who intentionally violates this article or a rule adopted by the commission under this article. The amount of an administrative penalty may not exceed the maximum amount of a civil penalty under this section. A continuing violation is subject to separate administrative penalties in the same manner as it is subject to separate civil penalties. A proceeding on the assessment of an administrative penalty under this subsection is a contested case for purposes of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). On appeal of the assessment of an administrative penalty under this subsection, the manner of review is by trial de novo.

(d) If it is shown at the trial for collection of a civil penalty under this section or on appeal of an administrative penalty under this section that a judgment for a civil penalty, or a final order, not timely appealed, or a judgment for an administrative penalty, was previously assessed against the person, in addition to any penalty that may be assessed for the subsequent violation the court shall order the revocation of any permit held by the person for the location at which the subsequent violation occurred.

(e) Civil and administrative penalties collected under this article shall be deposited in the state treasury to the credit of the state highway fund.

SECTION 15. DISPOSITION OF FEES. Except as provided by Section 10 of this article, permit or registration fees collected by the commission under this article shall be deposited in the state treasury to the credit of the state highway fund.

SECTION 16. REGULATION OF OFF-PREMISE PORTABLE SIGNS IN CERTAIN COUNTIES. (a) The regulations imposed by or adopted under the other sections of this article do not apply to off-premise portable signs in the unincorporated area of a county with a population of 1.7 million or more, according to the most recent federal census. In such a county, the commissioners court may prohibit off-premise portable signs in the unincorporated area of the county and may regulate the following matters in that area:

(1) the location, height, size, and anchoring of off-premise portable signs; and

(2) other matters relating to the use of off-premise portable signs.

(b) If a county prohibition or regulation adopted under this section conflicts with state law or with a rule adopted under state law by a state agency, the county prohibition or regulation prevails. If a county prohibition or regulation adopted under this section conflicts with a municipal sign ordinance that has been extended within the municipality's extraterritorial jurisdiction as permitted by Article 3 of this Act, the municipal ordinance prevails in that area.

(c) The appropriate attorney representing the county in the district court may seek injunctive relief to prevent the violation or threatened violation of a prohibition or regulation adopted under this section.

(d) The commissioners court may define an offense for the violation of a prohibition or regulation adopted under this section. If the commissioners court defines an offense, the offense is a Class C misdemeanor. The offense is prosecuted in the same manner as an offense defined by state law.

ARTICLE 3

SECTION 1. REGULATION IN CITY EXTRATERRITORIAL JURISDICTION. Any municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce such ordinance within its area of extraterritorial jurisdiction as defined by the Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes). However, any municipality, in lieu of such regulatory ordinances, may allow the State Highway and Public Transportation Commission to regulate outdoor signs in that city's extraterritorial jurisdiction by filing a written notice with the commission.

SECTION 2. PRECEDENCE OF MUNICIPAL ORDINANCE. If a municipality extends its outdoor sign ordinance within its area of extraterritorial jurisdiction, the municipal ordinance supersedes the regulations imposed by or adopted under Article 2 of this Act.

ARTICLE 4

SECTION 1. Section 3, Property Redevelopment and Tax Abatement Act (Article 1066f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DESIGNATION OF REINVESTMENT ZONES. (a) To be designated as a reinvestment zone, an area must:

(1) substantially impair or arrest the sound growth of a city or town, retard the provision of housing accommodations, or constitute an economic or social

liability and be a menace to the public health, safety, morals, or welfare in its present condition and use by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures; predominance of defective or inadequate sidewalk or street layout; faulty lot layout in relation to size, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; the existence of conditions that endanger life or property by fire or other cause; or any combination of these factors or conditions;

(2) be predominantly open and, because of obsolete platting or deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the city or town;

(3) be in a federally assisted new community located within a home-rule city or in an area immediately adjacent to the federally assisted new community;

(4) be located wholly within an area which meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974; [or]

(5) encompass signs, billboards, and other outdoor advertising structures designated by the governing body of the incorporated city or town for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the city or town, which the legislature hereby declares to be a public purpose; or

(6) be designated a local or state-federal enterprise zone under the Texas Enterprise Zone Act.

(b) For the purposes of Subdivision (3) of Subsection (a) of this section, a federally assisted new community is a federally assisted area that received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974.

(c) The governing body of an incorporated city or town may designate, by boundaries, as a reinvestment zone any area, or real or personal property whose use is directly related to the business of outdoor advertising, within the taxing jurisdiction of the city or town that the governing body finds to satisfy the requirements of Subsection (a) of this section, subject to the limitations set forth by Section 4 of this Act. The governing body of an incorporated city or town shall designate a reinvestment zone eligible for residential property tax abatement, or commercial-industrial tax abatement, or tax incentive financing as provided for in the Texas Tax Increment Financing Act of 1981 (Article 1066e, Vernon's Texas Civil Statutes) [~~S.B. No. 16, 67th Legislature, 1st Called Session, 1981~~].

ARTICLE 5

SECTION 1. EFFECTIVE DATE. This Act takes effect September 1, 1985, except that Article 3 of this Act takes effect immediately.

SECTION 2. EFFECT OF PARTIAL INVALIDITY. (a) The legislature declares that it would not have enacted this Act without the inclusion of Section 5(a) of Article 1, to the extent that provision excludes modes of compensation not specifically authorized by that provision. If this exclusion of alternative modes of compensation is for any reason held invalid by a final judgment of a court of competent jurisdiction, the remainder of this Act is void.

(b) Except as provided by Subsection (a) of this section, this Act is severable as provided by Chapter 45, Acts of the 63rd Legislature, Regular Session, 1973 (Article 11a, Vernon's Texas Civil Statutes).

SECTION 3. COURT-APPROVED SETTLEMENT. Nothing in this Act affects a court-approved settlement entered into before the effective date of this Act in any litigation in a court of the United States involving the validity of municipal regulation of signs. To the extent a provision of this Act conflicts with the terms of such a settlement, the terms of the settlement prevail.

SECTION 4. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator McFarland offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend the floor substitute to **C.S.H.B. 1330** by adding a new Subsection 6(k) to read as follows:

"For a sign erected after the effective date of this Act and as to any sign currently in place which is made non-conforming by an extension of or strengthening of an ordinance which was in effect on June 1, 1985, and contained an amortization plan then the amortization period shall equal useful life as determined by the board in subsection (h) but without regard to the computations provided in subsection (h)(1)(2) or (3)."

The amendment was read and was adopted.

Floor Amendment No. 1 as amended was adopted.

On motion of Senator Uribe and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTES

Senators Barrientos, Mauzy, Montford and Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1330 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1330** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Mauzy, Montford, Washington.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1593

Senator Jones submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1593** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

JONES	RUDD
BLAKE	OLIVEIRA
GLASGOW	STILES
LEEDOM	VOWELL
McFARLAND	WOLENS
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
SENATE BILL 540

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 540** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE	ECKELS
HENDERSON	GREEN
BROOKS	NELSON
WASHINGTON	KELLER
BROWN	WALLACE
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to retirement and civil service status of fire fighters, police officers and certain other city employees, including those employed in specialized police divisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 8, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. CLASSIFICATION OF FIREMEN AND POLICEMEN; EDUCATIONAL INCENTIVE PAY; APPOINTMENTS. (a) In a city having a population of 1,500,000 or more, according to the most recent federal census, the Commission shall provide for the classification of all firemen and policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance the number of positions of each classification.

(b) Except as expressly provided by Subsection (f) of this section, no [~~No~~] classification now in existence, or that may be hereafter created in such cities, shall ever be filled except by examination held in accordance with the provisions of this

law. All persons in each classification shall be paid the same salary and in addition thereto be paid any of the following types of pay that they may be entitled to: (1) longevity pay; (2) seniority pay; (3) educational incentive pay; or (4) assignment pay. This shall not prevent the Head of such Department from designating some person from the next lower classification to fill a position in a higher classification temporarily, but any such person so designated by the Head of the Department shall be paid the base salary of such higher position plus his own longevity pay during the time he performs the duties thereof. The temporary performance of the duties of any such position by a person who has not been promoted in accordance with the provisions of this Act shall never be construed to promote such person. All vacancies shall be filled by permanent appointment from eligibility lists furnished by the Commission within sixty (60) days after such vacancy occurs. If no list is in existence, the vacancy shall be filled from a list which the Commission shall provide within ninety (90) days after such vacancy occurs.

(c) Firemen and policemen shall be classified as above provided, and shall be under civil service protection except the Chief or Head of such Fire Department or Police Department, by whatever name he may be known.

(d) Said Chiefs or Department Heads shall be appointed by the Chief Executive, and confirmed by the City Council or legislative body except in cities where the Department Heads are elected. In those cities having elective Fire and Police Commissioners the appointments for Chiefs and Heads of those Departments shall be made by the respective Fire or Police Commissioners in whose Department the vacancy exists, and such appointments shall be confirmed by the City Council or legislative body.

(e) Said City Council or legislative body may authorize educational incentive pay in addition to regular pay for policemen and firemen within each classification, who have successfully completed courses in an accredited college or university, provided that such courses are applicable toward a degree in law enforcement-police science and include the core curriculum in law enforcement or are applicable toward a degree in fire science. An accredited college or university, as that term is used herein, shall mean any college or university accredited by the nationally recognized accrediting agency and the state board of education in the state wherein said college or university is located and approved or certified by the Texas Commission on Law Enforcement Officer Standards and Education as teaching the core curriculum or its equivalent or, in the case of fire science degree courses, approved or certified by the Texas Commission on Fire Protection, Personnel Standards, and Education. Core curriculum in law enforcement, as used herein, shall mean those courses in law enforcement education as approved by the Coordinating Board, Texas College and University System and the Texas Commission on Law Enforcement Officer Standards and Education.

(f) In any city having a population of 1,500,000 or more according to the most recent federal census, the Fire Chief or Police Chief may appoint persons to hold command staff positions in their departments subject to the following:

(1) The Police Chief may appoint to any position at the rank of Assistant Chief any member of the classified service who has served for at least five (5) years in the department as a sworn police officer and who meets the additional required qualifying criteria for filling the positions that were established by the Police Chief and approved by a vote of two-thirds (2/3) of the city council present and voting. An appointment may not be made before the required qualifying criteria have been established and approved as prescribed by this subdivision.

(2) The Fire Chief may appoint to any position at the rank of Assistant Chief any member of the classified service who has served for at least five (5) years in the department as a certified fire fighter and who meets the additional required qualifying criteria for filling the positions that were established by the Fire Chief and

approved by a vote of two-thirds (2/3) of the city council present and voting. An appointment may not be made before the required qualifying criteria have been established and approved as prescribed by this subdivision.

(3) The Fire Chief or Police Chief may remove any person appointed under this subsection without cause. If an appointee is removed without cause, the appointee shall be restored to that person's highest rank earned by competitive examination. However, if a person appointed under this subsection is temporarily or indefinitely suspended for cause from the appointive position, the suspension from the department is subject to the procedures for disciplinary action specified by this Act. If a person is indefinitely suspended for cause, the person does not have a right to reinstatement to the highest rank earned by competitive examination except to the extent that the indefinite suspension is reversed or modified by order of the commission or a hearing examiner.

(4) A person occupying a position in a rank specified in Subdivision (f)(1) or (f)(2) of this section on the effective date of this subsection may not be removed except for cause in accordance with the procedures for disciplinary action or demotion specified by this Act.

(5) A person occupying a position in a rank specified in Subdivision (f)(1) or (f)(2) of this section may voluntarily demote himself to his highest rank earned by competitive examination.

(6) A person may remove himself from consideration for appointment to a position in a rank specified in Subdivision (f)(1) or (f)(2) of this section.

(7) A person appointed under Subdivision (f)(1) or (f)(2) of this section may take any promotional examination for which the person would have been eligible under Section 14 of this Act.

(8) A person appointed under the provisions of Subsection (f)(1) or (f)(2) shall be subject to confirmation by the governing body of the city.

SECTION 2. Section 8B, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In any city having a population of 1,500,000 or more, according to the most recent federal census, the city council or legislative body may authorize assignment pay for emergency ambulance attendants, [~~and~~] field training officers, and hazardous materials response team personnel in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the fire department. The chief of the fire department is not eligible for the assignment pay authorized by this section.

(d) In any city having a population of 1,500,000 or more according to the most recent federal census, the city council or legislative body may authorize assignment pay for bilingual personnel performing specialized functions as interpreters or translators in their respective departments. The assignment pay is in an amount and payable under conditions set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the fire or police department. If the ordinance applies equally to all persons meeting criteria established by the ordinance, the ordinance may provide for payment to each fire fighter or police officer who meets testing or other certification criteria for an assignment, or the ordinance may set criteria that will determine the foreign languages in which a person must be fluent or other criteria for eligibility. The ordinance may provide for different rates of pay according to a person's capability and may allow more pay to those members who are capable of translating orally and into written English. The chiefs of the fire and police departments are not eligible for the assignment pay authorized by this subsection.

SECTION 3. Section 8B(b), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (6) and (7) to read as follows:

(6) "Hazardous materials response team personnel" means a member of the fire department who is assigned to a hazardous materials response team and who actually stabilizes or participates in the stabilization of hazardous materials in an emergency.

(7) "Bilingual personnel" means a member of the fire or police department who in the performance of the member's duties is capable of effectively translating orally a language other than English into English, and when necessary, effectively translating the language into written English.

SECTION 4. Section 9, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. EXAMINATION FOR ELIGIBILITY LISTS. (a) The Commission shall make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as herein prescribed. All eligibility lists for applicants for original positions in the Fire and Police Departments shall be created only as a result of such examinations, and no appointments shall ever be made for any position in such Departments except as a result of such examination, which shall be based on the applicant's knowledge of and qualifications for fire fighting and work in the Fire Department, or for police work and work in the Police Department, as shown by competitive examinations in the presence of all applicants for such position, and shall provide for thorough inquiry into the applicant's general education and mental ability. Fire Department entrance examinations may be given at different locations if all applicants are given the same examination and examined in the presence of other applicants. An applicant may not take the examination more than once for each eligibility list. An applicant may not take an examination unless at least one (1) other applicant being tested is present.

(b) An applicant who has served in the armed forces of the United States and who received an honorable discharge shall receive five (5) points in addition to his competitive grades.

(c) The Commission shall keep all eligibility lists for applicants for original positions in the Fire Department or Police Department in effect for not less than six (6) months nor more than twelve (12) months unless the names of all applicants have been referred to the appropriate Department. The Commission shall give a new examination at the end of the twelve (12) month period or sooner, if applicable, or if all names on the list have been referred to the appropriate Department. The Commission shall determine how long each eligibility list shall remain in effect within the six (6) to twelve (12) month period and shall include this information on the eligibility announcement.

(d) Appropriate physical examinations shall be required of all applicants for beginning or promotional positions, and the examinations shall be given by a physician appointed by the Commission and paid by such city; and in the event of rejection by such physician, the applicant may call for further examination by a board of three (3) physicians appointed by the Commission, but at the expense of the applicant, whose findings shall be final. The age and physical requirements shall be set by the Commission in accordance with provisions of this law and shall be the same for all applicants.

(e) No person shall be certified as eligible for a beginning position with a Fire Department who has reached his thirty-sixth birthday. No person shall be certified as eligible for a beginning position with a Police Department who has reached his thirty-sixth birthday unless the applicant has at least five (5) years prior experience as a peace officer, or 5 years of military experience. No person shall be certified as eligible for a beginning position with a Police Department who has reached his forty-fifth birthday.

(f) In a city having a population of 1,500,000 or more, according to the most recent federal census, a person may not be certified as eligible for a beginning position with a Police Department unless the person:

(1) is at least 21 years of age at the end of the probationary period; or

(2) served in the armed forces of the United States and received an honorable discharge; or

(3) has earned at least sixty (60) hours' credit in any area of study at an accredited college or university.

(g) All police officers and firemen coming under this Act must be able to [~~intelligently~~] read and write the English language.

(h) When a question arises as to whether a fireman or policeman is sufficiently physically fit to continue his duties, the employee shall submit a report from his personal physician to the Commission. If the Commission, the head of the Department, or the employee questions the report, the Commission shall appoint a physician to examine the employee and to submit a report to the Commission, to the head of the Department, and to the employee. If the appointed physician's report disagrees with the report of the employee's personal physician, the Commission shall appoint a board of three (3) physicians to examine the employee. Their findings as to the employee's fitness for duty shall determine the issue. The cost of the services of the employee's personal physician shall be paid by the employee. All other costs shall be paid by the city.

(i) A fireman or policeman who has been certified by a physician selected by a firemen's or policemen's relief or retirement fund as having recovered from a disability for which he has been receiving a monthly disability pension shall, with the approval of the Commission and if otherwise qualified, be eligible for reappointment to the classified position that he held as of the date that he qualified for a monthly disability pension.

SECTION 5. Section 13, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. EXAMINATION PROCEDURE [~~NOTICE OF EXAMINATIONS~~]. (a) At least ten (10) days in advance of any entrance examination and at least thirty (30) days in advance of any examination for promotion, the Commission shall cause to be posted on a bulletin board located in the main lobby of the city hall, and the office of the Commission, and in plain view, a notice of such examination, and said notice shall show the position to be filled or for which examination is to be held, with date, time, and place thereof, and in case of examination for promotion, copies of such notice shall be furnished in quantities sufficient for posting in the various stations or subdepartments in which position is to be filled. No one under eighteen (18) years of age shall take any entrance examination, and appointees to the Police and Fire Department shall not have reached their thirty-sixth birthday for entrance into the Fire Department or Police Department. The results of each examination for promotion shall be posted on a bulletin board located in the main lobby of the city hall by the Commission within twenty-four (24) hours after such examination.

(b) In a city having a population of 1,500,000 or more according to the most recent federal census, the Commission shall adopt rules to standardize the procedures for entrance and promotional examinations. The rules shall provide:

(1) that each applicant has adequate space in which to take the examination;

(2) that each applicant is provided with a desk;

(3) that the room in which the examination is held has a public address system; and

(4) the maximum number of times an applicant may leave the room and the procedure each applicant must follow when leaving or entering the room during the examination.

(c) In a city having a population of 1,500,000 or more according to the most recent federal census, the city shall, at least thirty (30) days in advance of any examination for promotion, post a notice of the number of newly created positions. The notice must be posted in plain view on a bulletin board located in the main lobby of the city hall and in the office of the Commission. The city shall distribute the notice to all stations and subdepartments.

SECTION 6. Section 16b(a), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In a city having a population of 1,500,000 or more according to the most recent federal census, the head of either the fire or the police department may suspend an officer or employee under his jurisdiction or supervision for disciplinary purposes, for reasonable periods, not to exceed 15 days. If offered by the chief or head of the department, the officer or employee may agree in writing to voluntarily accept, with no right of appeal, a suspension of not less than 16 nor more than 90 calendar days for violation of civil service rules. The officer or employee must accept the offer not later than the fifth working day after the offer is made. If the officer or employee refuses an offer of suspension of not less than 16 or more than 90 calendar days and wishes to appeal to the commission, the officer or employee must file a written appeal with the commission not later than the 15th day after the date the officer or employee receives the statement. If the department suspends a person, the department head shall file with the commission not later than the 120th hour after the person is suspended a written statement of action, and the commission shall, on appeal of the suspended officer or employee, hold a public hearing as prescribed by Section 17 of this Act. The commission shall determine whether just cause exists for the suspension. If the department head fails to file the statement with the commission within the 120-hour time period, the suspension is void and the employee is entitled to his full salary. The commission may reverse the decision of the department head and instruct the department head to immediately restore the employee to his position and to repay the employee for any lost wages. If the commission finds that the period of disciplinary suspension should be reduced, it may order a reduction in the period of suspension. If the department head refuses to obey the order of the commission, the provisions of Section 16 of this Act relating to salaries of employees, the discharge of the department head, and the other provisions relating to the refusal of the department head apply.

SECTION 7. Section 16c(a), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In a city in this state that has adopted this Act [~~having a population of less than 1,500,000 according to the most recent federal census~~], in an appeal of an indefinite suspension, a suspension, a promotional passover, or a recommended demotion, the appealing employee may elect to appeal to an independent third party hearing examiner instead of to the commission. To exercise this choice, the appealing employee must submit a letter to the director stating his decision to appeal to an independent third party hearing examiner.

SECTION 8. Section 16d(a), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In a city in this state that has adopted this Act [~~having a population of less than 1,500,000 according to the most recent federal census~~], if a fire fighter or police officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the procedures prescribed by this section apply.

SECTION 9. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 16e to read as follows:

Sec. 16e. POLYGRAPH EXAMINATIONS. In a city having a population of 1,500,000 or more according to the most recent federal census, a police officer or fire fighter employed by the city shall not be required to submit to a polygraph examination as part of an internal investigation regarding the conduct of the fire fighter or police officer unless and until the complainant submits to and passes a polygraph examination. The polygraph examination restriction does not apply if the complainant is physically or mentally incapable of being polygraphed. For the purposes of this section, a person "passes" a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated regarding matters critical to the subject matter under investigation. The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the civil service commission or a hearing examiner. (Nothing herein shall preclude the Chief from ordering a police officer or fire fighter to submit to a polygraph examination when, in the exercise of his discretion, he considers the circumstances to be extraordinary and he believes that the integrity of a police officer or fire fighter or the department is in question.)

SECTION 10. Section 18, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. APPEAL TO DISTRICT COURT. In the event any fire fighter or police officer [~~Fireman or Policeman~~] is dissatisfied with any decision of the Commission, he may, within ten (10) days after the rendition of such final decision, file a petition in the District Court, asking that the decision be set aside, and such case shall be tried de novo. In a city having a population of 1,500,000 or more according to the most recent federal census, all appeals from an indefinite suspension shall be advanced on the District Court docket and shall be given a preference setting over all other cases. The court in such actions may grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including reinstatement or promotion with back pay where an order of suspension, dismissal, or demotion is set aside. The court may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party. If the court finds for the fire fighter or police officer [~~fireman or policeman~~], the court shall order the city to pay lost wages to the fire fighter or police officer [~~fireman or policeman~~].

SECTION 11. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 20A to read as follows:

Sec. 20A. UNCOMPENSATED DUTY IN CERTAIN CITIES. (a) In this section, "uncompensated duty" means days of work without pay in a fire or police department and does not include regular or normal work days.

(b) In a city having a population of 1,500,000 or more according to the most recent federal census, the chief or head of the Fire or Police Department may assign any officer or employee under his jurisdiction or supervision to uncompensated duty. The chief or department head may not impose uncompensated duty unless the officer or employee agrees. The duty may be in place of or in combination with a period of disciplinary suspension without pay. If uncompensated duty is combined with a disciplinary suspension, the total number of uncompensated duty days may not exceed 15. If the officer or employee agrees in writing to accept uncompensated duty, the chief or department head shall give the officer or employee a written statement that specifies the date or dates on which the officer or employee will perform uncompensated duty. If the officer or employee agrees to accept uncompensated duty, the officer or employee does not have a right to administrative or judicial review.

(c) An officer or employee may not earn or accrue any benefit arising from length of service or any wage or salary while the officer or employee is suspended

or performing uncompensated duty. A disciplinary suspension does not constitute a break in a continuous position or service in the department for the purpose of determining eligibility for a promotional examination. Except as provided by this subsection, an officer or employee performing assigned uncompensated duty retains all rights and privileges of his position in the department and of his employment by the city.

SECTION 12. Section 26(b), Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26(b). TERMINATION OF SERVICE, LUMP SUM PAYMENTS: CITIES OF 1,500,000 [~~1,200,000~~] OR MORE, ACCUMULATED SICK LEAVE; CITIES OF 650,000 OR MORE, ACCUMULATED VACATION LEAVE. (a) In any city in this State having a population of one million, five [~~two~~] hundred thousand (1,500,000) [~~(1,200,000)~~] or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason or the beneficiaries of any fireman or policeman who loses his life as a result of a line of duty injury or illness shall receive in a lump sum payment the full amount of his [~~salary for the period of his~~] accumulated sick leave as provided by Subdivisions (1) and (2) of this subsection.

(1) A fireman or policeman hired before September 1, 1985, shall have his sick leave [~~Sick leave shall be~~] accumulated without limit. All sick leave accumulated before September 1, 1985, shall be valued at the fireman's or policeman's salary on August 31, 1985. Sick leave accumulated after September 1, 1985, shall be valued at the fireman's or policeman's average salary in the fiscal year in which the sick time was accumulated. Beginning September 1, 1985, each day or part of a day of sick leave used by a fireman or policeman shall be charged to that person's earliest acquired unused accumulated day of sick leave, in the same manner as is utilized in the first in, first out accounting principle. All firemen and policemen hired by the city before September 1, 1985, shall have a one-time option to select coverage under the city ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this Act. The option terminates on December 31 of the year in which this section takes effect in the city.

(2) The sick leave of any person who becomes a member of the fire or police department on or after September 1, 1985, shall be covered by the city ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this Act.

(3) Any city coming under this subsection shall provide, in its annual budget, a sum reasonably calculated to provide funding for sick leave benefits for the fiscal year covered by that budget.

(b) In any city in this State having a population of six hundred and fifty thousand (650,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason shall receive in a lump sum payment the full amount of his salary for the period of his accumulated vacation leave, provided that such payment shall be based upon not more than sixty (60) working days of accumulated vacation leave. Any fireman or policeman who leaves the classified service or loses his life as the result of a line of duty injury or illness or the beneficiaries of such fireman or policeman shall be paid the full amount of his salary for the total number of his working days of accumulated vacation leave.

SECTION 13. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 29 to read as follows:

Sec. 29. GRIEVANCE PROCEDURE IN CERTAIN CITIES. (a) In a city having a population of 1,500,000 or more, according to the most recent federal

census, a member of the fire or police department may file a grievance as prescribed by this section. A member of the fire or police department may file a grievance that relates to the same aspects of his employment over which the civil service commission for the employees of the city who are not subject to this Act would have lawful jurisdiction, except a grievance relating to:

(1) any disciplinary or other action or decision for which a hearing, review, or appeal is otherwise provided by this Act; or

(2) in whole or in part, an allegation of discrimination based on race, color, religion, sex, or national origin.

(b) The civil service director shall monitor and assist the operation of the grievance procedure. The duties of the director include:

(1) aiding the departments and departmental grievance counselors;

(2) notifying the parties of meetings;

(3) docketing cases before the grievance examiner; and

(4) ensuring that the grievance procedure operates timely and effectively.

(c) The chief of the department shall appoint from among the members of the department a grievance counselor whose duties include:

(1) providing appropriate grievance forms to a member;

(2) accepting, on behalf of the chief of the department, a step I or II grievance;

(3) assisting the member in handling the grievance;

(4) forwarding a copy of step I or II grievance forms to the director and notifying the chief of the department;

(5) arranging a meeting between the aggrieved member and the member's immediate supervisor as prescribed by Subsection (d)(1)(B) of this section;

(6) arranging the meeting between the member and the member's chief or the chief's designated representative as prescribed by Subsection (d)(2)(B) of this section; and

(7) performing duties that may be assigned by the chief of the department.

(d)(1) The grievance procedure consists of four steps. A member must file in writing a step I grievance as prescribed by this subdivision not later than the 30th day after the date on which the action or inaction for which the member feels aggrieved occurred. If the step I grievance form is not timely filed, the grievance is waived. The following procedure must be followed during step I:

(A) An aggrieved member may obtain a grievance form from the departmental grievance counselor.

(B) The member must return the form to the chief of the department or to the departmental grievance counselor, who shall arrange a meeting between the member, the member's immediate supervisor, and the person or persons against whom the grievance was lodged. If the grievance was lodged against the chief of the department, the chief may send his representative.

(C) The immediate supervisor shall fully, candidly, and openly discuss the grievance with the member in a sincere attempt to resolve it.

(D) Regardless of the outcome of the meeting, the immediate supervisor shall respond in writing to the member, with a copy to the grievance counselor, not later than the fifth working day after the date on which the meeting occurred. The response must include the supervisor's evaluation and proposed solution. The response shall either be personally delivered to the member or be mailed by certified mail, return receipt requested, to the last home address provided by the member.

(E) If the proposed solution is not acceptable, the member may file a step II grievance form with the chief of the department or the departmental grievance counselor. If the aggrieved member fails to timely file a step II grievance form, the solution is considered accepted.

(2) The following procedure must be followed during step II:

(A) If the member rejects the proposed solution, the member must complete a step II grievance form and return it to the chief of the department or to the

departmental grievance counselor not later than the fifth day after the date on which the member received the supervisor's response.

(B) The departmental grievance counselor shall arrange a meeting between the member, the member's immediate supervisor, and the chief of the department or the chief's representative of at least the rank of assistant chief or the equivalent. The meeting must be held not later than the fifth working day after the date on which the step II grievance form was submitted to the chief or departmental grievance counselor.

(C) Regardless of the outcome of the meeting, the chief, or the chief's representative, shall provide the member with a written response to the grievance not later than the 10th working day after the date on which the meeting occurred. The response shall either be personally delivered to the member or be mailed by certified mail, return receipt requested, to the last home address provided by the member.

(D) If the proposed solution is not acceptable, the member may file a step III grievance form with the director. If the member fails to timely file a step III grievance form, the solution is considered accepted.

(3) The following procedure must be followed during step III:

(A) If the member rejects the proposed solution, the member must complete a step III grievance form and return it to the director not later than the 10th day after the date on which the member received the chief's response.

(B) The director shall arrange a hearing with the member and a grievance examiner to be chosen by the commission under Subsection (e) of this section. The hearing must be held not later than the 15th working day after the date on which the step III grievance form was submitted to the director.

(C)(i) A hearing is conducted as an informal administrative procedure. Grievances arising out of the same or similar fact situations may be heard. A court reporter shall record the hearing. All witnesses shall be examined under oath.

(ii) The member, the member's immediate supervisor, the chief of the department, and all persons specifically named in the grievance are parties to the hearing.

(iii) The burden of proof is on the aggrieved member.

(D) The grievance examiner shall make written findings and a recommendation for solution of the grievance not later than the 10th working day after the date on which the hearing concluded. The findings and recommendation shall be given to the commission and copies mailed to the member by certified mail, return receipt requested, to the last home address provided by the member, and to the chief of the department.

(E) If the proposed solution is not acceptable to either the member or the chief of the department, either party may file a step IV grievance form with the director. If the member or the chief fails to timely file a step IV grievance form, the solution is considered accepted.

(4) The following steps must be followed during step IV:

(A) If the chief or the member rejects the proposed solution, the chief or member must complete a step IV grievance form and return it to the director not later than the 10th day after the date on which the chief or member received the hearing examiner's recommendation.

(B) The commission shall review the grievance examiner's findings and recommendation and consider the transcript of the hearing at the commission's next regularly scheduled meeting or as soon as is practicable.

(C) The commission's decision shall be based solely on the transcript and demonstrative evidence offered and accepted at the step III hearing. The commission shall furnish the member, the chief of the department, and the grievance examiner with a written copy of its order. The copy to the member shall

be mailed by certified mail, return receipt requested, to the last home address provided by the member. The decision of the commission is final.

(e)(1) The commission shall appoint a grievance examiner by a majority vote. An examiner may not be affiliated with any other city department and is responsible only to the commission. The commission shall pay an examiner from a special budget established for this purpose, and the director shall provide an examiner sufficient office space and clerical support.

(2) The commission may appoint more than one grievance examiner if more than one examiner is required. The commission may appoint a different grievance examiner for each grievance.

(f) The grievance examiner appointed by the commission may:

(1) impose a reasonable limit on the time allowed each party and the number of witnesses to be heard;

(2) administer oaths;

(3) examine a witness under oath;

(4) subpoena and require the attendance or production of witnesses, documents, books, or other pertinent material; and

(5) accept affidavits instead of or in addition to live testimony.

(g) If the aggrieved member's immediate supervisor is the chief of the department, the steps prescribed by Subsections (d)(1) and (d)(2) of this section are combined. The chief of the department shall meet with the aggrieved member and may not appoint a representative.

(h)(1) A member may represent himself or obtain a representative at any time during the grievance procedure. The representative is not required to be an attorney. The city is not obligated to provide or pay the costs of providing representation.

(2) A member may take reasonable time off from a job assignment to file a grievance and attend a meeting or hearing. Time taken to pursue a grievance may not be charged against a member.

(i) A chief of a department, with the approval of the commission, may change the procedure prescribed by Subsections (d)(1) and (d)(2) of this section to reflect a change in a department's chain of command.

(j) If the final day to file a grievance form is on a Saturday, Sunday, or city holiday, the time period shall be extended through the next regular city work day.

(k) The director shall provide a suitable notice explaining this grievance procedure and furnish copies to each department. Each chief of a department shall cause the notices to be posted in a prominent place or places within the work areas of the department so as to give reasonable notice of the grievance procedure to all members of the department.

(l) If requested to do so by the chief of the department of a member who has filed a grievance under this procedure, the legal department of the city or the director shall assist in resolving the grievance.

(m) The director is the official final custodian of all records involving grievances. A depository for closed files regarding grievances shall be maintained in the civil service department.

SECTION 14. Section 4 of Chapter 432, Acts of the 64th Legislature, Regular Session, 1975 as amended by Sec. 1 and Sec. 2 of Chapter 821, Acts of the 67th Legislature, Regular Session, 1981 (Section 4 of Article 6243e.2, Vernon's Annotated Civil Statutes), as amended, is amended to read as follows:

Sec. 4. PENSION AND ADDITIONAL PENSION ALLOWANCES; SERVICE RETIREMENT; ELECTIONS; CONTRIBUTIONS; CERTIFICATE OF SERVICE; LIMITS; ANNUAL ADJUSTMENTS. (a) Any person who has been duly appointed and enrolled and who has attained the age of 50 years, and who has served actively for a period of 20 years or more and has participated in a fund in a city which is within the provisions of this Act, shall be entitled to be retired from

the service or department and shall be entitled to be paid from the firemen's relief and retirement fund of that city or town, a monthly pension equal to 50 percent of his average salary for the highest 36 months of his service. Any fireman shall be entitled to be paid in addition to the benefits provided for in this subsection an additional pension allowance of one percent of his average monthly salary for the highest 36 months during his participation for each year of service after the date on which such fireman shall be entitled to be retired.

(b) A fireman who has 20 years of service and participation in a fund [~~under this section~~] may[~~, if he so elects,~~] be retired from the department and receive a monthly pension allowance of 35 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 35 percent be paid an additional monthly pension allowance equal to three percent of his average monthly salary for each year of service in excess of 20 years until the fireman completes 25 years of service thereby providing a monthly pension allowance equal to 50 percent of the fireman's average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 25 years, he shall receive, in addition to the pension allowances provided for in Subsection (b) of this section, an additional monthly pension allowance equal to one percent of his average salary for each year of participation in excess of 25 years.

(c) From and after July 1, 1986 a fireman who completes 20 years of service and participation in this fund may be retired from the department and receive a monthly pension allowance of 40 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 40 percent be paid, upon retirement an additional monthly pension allowance equal to two percent of his average monthly salary for the highest 36 months during his participation for each year of service in excess of 20 years until the fireman completes 30 years of service, thereby providing a monthly pension not to exceed 60 percent of the fireman's average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 30 years, he shall receive a monthly pension of 60 percent of his average monthly salary for the highest 36 months during his participation.

[~~(c)~~] (d) The maximum pension allowance to be received by any fireman [~~under this section or Section 6 or 7 of this Act~~] shall not exceed 60 percent of the fireman's average monthly salary for the highest 36 months during his participation, except as it may be adjusted pursuant to subsection (g), (h), (i) or (j) of this section.

(e) [~~(d)~~] Any eligible and qualified fireman who has completed 20 years of service or more and of participation in a fund in a city to which this section is applicable, before reaching the age of 50 years, may apply to the board of trustees for, and the board shall issue, a certificate showing the completion of service and showing and certifying that the fireman, when reaching the age of 50 years, is entitled to the retirement and other applicable benefits of this Act. When any fireman is issued a certificate he is, when reaching retirement age, entitled to all the applicable benefits of this Act, even though he is not engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

[~~(e)~~] (f) All firemen entering a fire department coming within the provisions of this section after the effective date of this Act shall retire under the benefit provisions of either Subsection (a), (b) or (c) of this section unless the retirement is for disability.

[~~(f)~~] (g) All firemen who retire under the provisions of this section or Section 6 or 7 of this Act shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Consumers [~~Wage Earners and Clerical Workers~~] as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent annually notwithstanding a greater increase in the consumer price index. This subsection shall not apply in any instance where a retired fireman is eligible for an adjustment under subsection (h) or (i) of this section.

[~~(g)~~] (h) All firemen who retire after March 1, 1982, under the provisions of this section or Section 6 or 7 of this Act upon reaching the age of 55 shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers [~~Wage Earners and Clerical Workers~~] as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension shall never be more than the amount granted the member on the date of his retirement increased by three percent annually not compounded, notwithstanding a greater increase in the consumer price index. The adjustment provided by this subsection shall be the only postretirement adjustment paid to firemen retiring after March 1, 1982.

(i) A pension that becomes payable after July 1, 1986, under the provisions of this section or Section 6 or 7 of this Act and that is based on the service of a fireman with 30 or more years of service or who has reached the age of 55 shall be adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor. Notwithstanding a greater change in the consumer price index, an annual adjustment may not exceed three (3) percent, not compounded. The total amount of a pension adjusted under this subsection may never be less than the basic pension granted at the time of retirement or death or more than the sum of the amount granted at the time of retirement or death plus an increase of three (3) percent annually, not compounded.

[~~(h)~~] (j) All pensioners who retired prior to May 3, 1971, or their survivors shall have their pensions increased in an [~~adjusted on a one-time basis in an~~] amount [~~equal to 20 percent of their pension payment. However, in no instance shall the increase be less than $15 a month~~] of $100.00 a month. This postretirement adjustment shall be from and after January 1, 1986 [~~effective September 1, 1981~~].

SECTION 15. Section 6 of Chapter 432, Acts of the 64th Legislature, Regular Session, 1975 (Section 6 of Article 6243e.2, Vernon's Annotated Civil Statutes), is amended to read as follows:

Sec. 6. DISABILITY [~~RETIREMENT; AMOUNT OF PENSION; SERVICE RETIREMENT ELECTION~~]. (a) Whenever a fireman becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the fireman is not capable of performing the usual and customary duties of his classification or position, retire the fireman on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his service, or so much thereof as he may have served.

(b) Whenever a fireman becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension

allowance shall be paid to the fireman. Such monthly pension allowance shall be equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund, except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during service, or so much as he may have served preceding the date of the retirement.

(c) If the fireman is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section.

SECTION 16. Section 7 of Chapter 432, Acts of the 64th Legislature, Regular Session, 1975 (Section 7 of Article 6243e.2, Vernon's Annotated Civil Statutes), as amended is amended to read as follows:

Sec. 7. CALCULATION OF BENEFITS UPON DEATH [~~DEATH OR DISABILITY FROM ANY CAUSE OTHER THAN PERFORMANCE OF DUTY; MONTHLY PENSION ALLOWANCE TO FIREMAN OR BENEFICIARY; COMPUTATION; SERVICE RETIREMENT ELECTION; ANNUAL ADJUSTMENT~~]. (a) For the purpose of the calculation of the survivor benefits described in Section 11 of this Act the pension amount being paid to a retired fireman at the time of his death shall be utilized. In any instance where a fireman dies before retirement or before pension benefits are commenced the Board shall calculate the pension amount under the applicable sections of this Act and such amount shall be utilized for the calculation of survivor benefits.

(b) Whenever, a fireman dies in the course of the performance of his duty or dies after being placed on disability from injuries received during the performance of his duty his benefits shall be calculated at 100% of his average monthly salary, the average monthly salary shall be based upon the monthly average of the fireman's salary for the highest 36 months during service.

[~~(a) Whenever a fireman dies or becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman or his beneficiaries.~~

[~~(b) The monthly pension allowance shall be computed as follows:~~

[~~(1) If the fireman becomes disabled, he shall be paid a monthly pension allowance equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during service, or so much as he may have served preceding the date of the retirement.~~

[~~(2) If the fireman was eligible to be retired under the provisions of Section 4 of this Act, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section.~~

[~~(3) If a fireman dies and leaves surviving him both a widow who married the fireman prior to his retirement, and a child or children of the fireman under the age of 18 years, the board of trustees shall order paid to the widow of the fireman a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance for the use and benefit of the child or children equal to the amount provided for the widow. If the fireman leaves no children under the age of 18 years surviving him or if at any time after the death of the fireman no child is entitled to allowance, then the monthly pension allowance to be paid the~~

~~widow shall be equal to the full amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection.~~

~~[(4) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to the full amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of the fireman's children under the age of 18 years, except that the total monthly pension shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection. If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance shall be extended to a child or children on proof to the board of trustees that the child or children are unmarried, a full-time student and between the ages of 18 and 22, the monthly pension shall be extended only for the period of time the child remains a full-time student, the monthly pension allowance shall be paid directly to the child or children and shall be an amount equal to the full amount the fireman would have been entitled to receive, except that the total amount shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection.~~

~~[(5) If the fireman dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of the deceased fireman on proof to the board of trustees that the parent was dependent on the fireman immediately prior to the death of the fireman, except that the total monthly pension allowance provided for parents shall not exceed the full amount the fireman would have been entitled to receive.~~

~~[(c) Allowance or benefits payable under the provisions of this section for any minor child shall cease when that child becomes 18 years of age or marries. If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.~~

~~[(d)]~~ (c) The provisions of this section are not applicable to a fireman or his beneficiaries if the fireman's death or disability results from suicide or attempted suicide before the fireman has completed two years of service with the fire department for which he was employed.

~~[(e) The wife of a deceased fireman who had served actively for a period of 20 years or more in a regularly active fire department shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married after the fireman died and she became a widow. A widow covered under this section shall be limited to the pension allowance of the deceased member of this fund, to whom she was last married.~~

[~~(f)~~] (d) The monthly pension of beneficiaries of a deceased fireman whose pension benefits were subject to the adjustment under the provisions of Sections 4(c), 4(h), 4(i) or 4(j) [~~or 4(g)~~] of this Act shall be adjusted in the same manner.

SECTION 17. Section 11, Chapter 432 Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.2, Vernon's Annotated Civil Statutes), as amended is amended to read as follows:

Sec. 11. (a) If a member of a fire department who is eligible for benefits under this Act or who is receiving retirement benefits under this Act dies, his survivors, as described below, shall be entitled to a continuation of his benefits pursuant to this section and Section 7 of this Act. [~~If a member of a fire department who has been retired on allowances because of length of service or disability dies from any cause whatsoever, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty and the member is participating in a fund, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if~~] If the fireman leaves surviving a widow, a child or children under the age of 18 years, a child who is over the age of 18 who is totally disabled as a result of a physical or mental illness, injury, or retardation, or a dependent parent or parents, the board of trustees shall order paid a monthly pension allowance. [~~which shall be based on the amount which the fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death.~~] The allowance or allowances shall be calculated and paid as follows:

(1) If a fireman dies and leaves surviving him both a widow who married the member prior to his retirement and a child or children of the member under the age of 18 years, the board of trustees shall order paid to the widow of the member a monthly pension allowance equal to one-half of the amount the member would have been entitled to receive, and in addition the board of trustees shall order paid to the widow or other person having care and custody of the child or children under the age of 18 years a monthly pension allowance, for the use and benefit of the child or children, equal to the amount provided for the widow. If the member leaves no child under the age of 18 years surviving him or if at any time after the death of the member no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the member would have been entitled to receive.

(2)(A) If the member dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to the full amount the member would have been entitled to receive shall be paid for the member's children under the age of 18 years, except that the total monthly pension provided for children shall not exceed the amount to which the member would have been entitled to receive.

(B) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance shall be extended to a child or children on proof to the board of trustees that the child or children are unmarried, a full-time student and between the ages of 18 and 22; the monthly pension shall be extended only for the period of time the child remains a full-time student; the monthly pension allowance shall be paid directly to the child or children and shall be an amount equal to the full amount the fireman would have been entitled to receive, except that the total amount shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection.

(3) If the member dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal

to one-half of the amount the member would have been entitled to receive shall be paid to each parent of the deceased member on proof to the board of trustees that the parent was dependent on the member immediately prior to the death of the member, except that the total monthly pension allowance provided for parents shall not exceed the full amount the member would have been entitled to receive.

(b) Allowance or benefits payable under the provisions of this section for any minor child shall cease when the child becomes 18 years of age or marries, except that if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

(c) The wife of a deceased fireman [~~who has been retired on disability allowances because of length of service or has been retired for disability after having actively served for a period of 20 years or more~~] shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. A widow covered under this section shall be limited to the pension allowance of the deceased member to whom she was last married.

(d) A fireman may designate a trustee for any beneficiary, other than their spouse, who may be eligible, pursuant to this Act, to receive an allowance or benefits. The fireman shall file a written designation with the Board of Trustees of the Firemen's Relief and Retirement Fund stating his appointment of a trustee. Such designation shall include the name and the address of the trustee, the name of the eligible beneficiary or beneficiaries to whom he or she intends to appoint a trustee. The Board shall upon the death of the fireman pay any allowance or benefits to the designated trustee for the benefit of the stated beneficiary.

SECTION 18. Chapter 432, Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.2, Vernon's Annotated Civil Statutes), is amended by adding a new Section 6A to read as follows:

Sec. 6A. The Board of Trustees of any firemen's relief and retirement fund shall establish benefit eligibility for a fulltime employee who has been employed for as long as six (6) years, and thereafter becomes disabled or dies from heart or lung disease or cancer, based upon a presumption that such death or disease was a consequence of his duties as a fireman, if the fireman shall have successfully passed a physical examination prior to the claimed disability or death, or upon entering upon his employment as a fireman, and the examination failed to reveal any evidence of the condition or disease of the lungs, hypertension, cancer or heart disease. Such benefit eligibility and such presumption shall be for the purposes only of such pension benefit to which such employee may be entitled under this Act.

SECTION 19. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 30 to read as follows:

Sec. 30. INTERROGATION AND RIGHTS IN CERTAIN CITIES. (a) This section applies to a fire fighter or police officer who is employed by a city having a population of 1,500,000 or more according to the most recent federal census.

(b) In this section:

(1) "Employee" means a fire fighter or police officer employed by the city who holds a position that is classified under this Act and who has completed the probationary period specified in Section 12 of this Act.

(2) "Investigation" means any administrative investigation conducted by the city of any alleged misconduct by an employee that could result in punitive action against that employee.

(3) "Investigator" means any agent or employee of the city who is assigned to conduct an investigation.

(4) "Punitive action" means a disciplinary suspension, indefinite suspension, demotion in rank, or any combination of those actions.

(c) An investigator may interrogate an employee who is the subject of an investigation only during the employee's normally assigned working hours unless:

(1) as determined by the employee's department chief or the chief's designee, the seriousness of the investigation requires interrogation at another time; and

(2) the employee is compensated for the interrogation time on an overtime basis.

(d) The department chief may not consider work time missed from regular duties by an employee due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

(e) Investigators may not interrogate an employee who is subject to an investigation at the employee's home without the permission of the employee.

(f) An employee who is subject to an investigation has the right to inquire and, on inquiry, to be informed of the identities of all investigators taking part in any interrogation of the employee.

(g) Before an investigator may interrogate an employee who is subject to an investigation, the investigator must inform the employee in writing of the nature of the investigation and the names of the persons who have complained about the employee concerning the matters under investigation. An investigator may not conduct an interrogation of an employee based on a complaint by a person who is not a peace officer unless the person verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. An investigator may interrogate an employee about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. As used in this subsection, "complainant" means a person claiming to be the victim of police misconduct. This subsection does not prohibit an interrogation based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was indeed anonymous. This subsection does not apply to on-the-scene investigations that occurred immediately after an incident being investigated if the limitations of this subsection would unreasonably hinder the essential purpose of the investigation or interrogation. If the limitation would hinder the investigation or interrogation, the employee under investigation must be furnished, as soon as practicable, with a written statement of the nature of the investigation and the names of the complaining parties.

(h) An interrogation session of an employee who is subject to an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the employee to attend to personal physical necessities.

(i) Investigators may not threaten an employee who is subject to an investigation with punitive action during an interrogation. However, an investigator may inform an employee that failure to truthfully answer reasonable questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.

(j) If prior notification of intent to record an interrogation is given to the other party, either the investigators or the employee subject to an interrogation may record the interrogation.

(k) If an investigation does not result in punitive action against an employee, but does result in a reprimand recorded in writing or an adverse finding or determination regarding the employee, the reprimand, finding, or determination may not be placed in a personnel file maintained on the employee unless the employee is first given an opportunity to read and sign the reprimand, finding, or determination. If the employee refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the employee refused to sign it. An employee may respond in writing to any reprimand, finding, or determination that is placed in the employee's personnel file under this subsection by submitting a written response to the department chief not later than the 10th day after the date on which the employee was asked to sign the document. the response shall be placed in the personnel file. An employee who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection not later than the 10th day after the date on which the employee is given written notice of the punitive action from the department chief.

(l) The governing body may, by ordinance, adopt the provisions of this section verbatim.

SECTION 20. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 30A to read as follows:

Section 30A. In any city with a population of 1,500,000 or more according to the most recent federal census Section 30 expires upon final enactment of an ordinance adopted by the governing body pursuant to subsection (l) of Section 30. Provided, however, that the governing body may not amend nor repeal such ordinance prior to two years after the effective date of the ordinance.

SECTION 21. Sections 2 and 14A, Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 2. DEFINITIONS. By the term 'Fireman' is meant any member of the Fire Department appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act. The term includes firemen who perform fire suppression, fire prevention, fire training, fire safety education, fire maintenance, fire communications, fire medical emergency technology, fire photography, or fire administration. By the term 'Policeman' is meant any member of the Police Department or other peace officer appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 14B or [~~Section~~] 24 of this Act. By the term 'Commission' as used herein is meant the Firemen's and Policemen's Civil Service Commission. The term 'Director' means Director of Firemen's and Policemen's Civil Service."

"Section 14A. CROSSOVER PROMOTIONS. (a) In any city in this State having a population of 1,500,000 or more inhabitants, according to the last preceding federal census, all members of the police department, who shall be employed by such department with duties in a specialized technical area, to wit: (1) technical class, which includes but is not limited to criminal laboratory analysis and interpretations, and the technical criminal aspects of identification and photography, or (2) communications class, which includes but is not limited to the technical operations of police radio communications, shall be eligible for promotions within their respective classes. [~~In addition, all peace officers employed~~

~~by the city, who shall be employed by such city department with duties in separate specialized police divisions, to wit: (1) park police class, which includes all sworn park police officers except those in ranks excluded from civil service status by this Act, or (2) airport police class, which includes all sworn airport police officers except those in ranks excluded from civil service status by this Act, or (3) city marshal class, which includes all sworn deputy city marshals except those in ranks excluded from civil service status by this Act, shall be eligible for promotions within their respective classes.~~]

"(b) In no event shall the members of the technical class, communications class, [~~park police class, airport police class, city marshal class,~~] or uniformed and detective class be eligible for promotion to a position outside of their respective class. This section shall be construed so as to preclude the lateral crossover by promotion by members of the technical or[~~,~~] communications class[~~, park police, airport police, and city marshal classes~~] into the uniformed and detective class of the department; also to preclude the lateral crossover by promotion of members of the uniformed and detective class into the technical or[~~,~~] communications class[~~, park police, airport police, and city marshal classes~~] of the department. In the event a member of one class desires to change classes, such may be accomplished upon qualification and only by entry into the new class at the lowest entry level of that class.

"(c) This section shall not operate so as to prevent the chief of police, assistant chiefs of police, and deputy chiefs of police, or their equivalent, by whatever name or title they may be called, from exercising the full sanctions, powers, duties, and authority of their respective offices in the supervision, management, and control over the uniformed and detective class, technical class, or communications class[~~, park police class, airport police class, and city marshal class~~].

"(d) All provisions of this article regarding eligibility lists, examinations, appointments, and promotions shall apply to members of the technical class, communications class, and uniformed [~~park police class, airport police class, city marshal class, uniform class~~] and detective class. However, said provisions shall apply only to the appointment and promotion of a member of a particular class to a new position within such class."

SECTION 22. Chapter 325, Acts of the 50th Legislature, Regular Session, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended by adding Section 14B to read as follows:

"Section 14B. SPECIALIZED POLICE DIVISIONS. (a) In any city in this state having a population of 1,500,000 or more, according to the most recent federal census, a peace officer employed by any city department in which the peace officer performs duties in a specialized police division, including but not limited to a person employed as a park police officer, airport police officer, or city marshal, is entitled to civil service status under this Act. The city council or legislative body of the city employing a peace officer in a specialized police division shall classify the officer in accordance with Section 8 of this Act and in accordance with the duties performed by the peace officer.

"(b) A peace officer who is employed in a specialized police division as provided by Subsection (a) of this section is eligible for promotion within the peace officer's respective class. A member of a particular class is not eligible for promotion to a position outside that class, and lateral crossover by promotion by a member of one class to another class is prohibited. If a member of one class desires to change classes, the member must qualify and enter into the new class at the lowest entry level of that class. The chief of police, assistant chiefs of police, and deputy chiefs of police, or their equivalent, by whatever name or title they may be called, may exercise the full sanctions, powers, duties, and authority of their respective offices in the supervision, management, and control of the members of those classes.

"(c) Each applicable provision of this Act, including the provisions relating to eligibility lists, examinations, promotions, appointments, educational incentive pay, longevity or seniority pay, certification pay, assignment pay, salary, vacation leave, and disciplinary appeals, applies to a peace officer employed by the city in a specialized police division as provided by this section."

SECTION 23. This Act takes effect September 1, 1985.

SECTION 24. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 1837 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1837, Relating to transactions by the Board of Regents of The University of Texas System relating to the issuance, sale, exchange, and redemption of bonds and notes.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

Amend **H.B. 1837** by striking "65.45" each place it appears in the bill and substituting in lieu thereof "65.46."

The committee amendment was read and was adopted.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1837 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1837** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 1986 ON SECOND READING

On motion of Senator Traeger and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1986, Relating to the construction of roads and highways in the State of Texas.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1986 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1986** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 72 ON SECOND READING

Senator Jones moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.J.R. 72, Proposing a constitutional amendment to require approval by the Legislative Budget Board and the office of the governor of certain state agencies' use of appropriated funds for private consulting services and professional services, and authorizing the legislature to require the prior approval of the expenditure or emergency transfer of other appropriated funds.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read second time.

Senator Jones offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **C.S.H.J.R. 72** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Article XVI of the Texas Constitution is amended by adding Section 69 to read as follows:

Sec. 69. The legislature may require, by rider in the General Appropriations Act or by separate statute, the prior approval of the expenditure or the emergency transfer of any funds appropriated to the agencies of state government.

SECTION 2. This proposal constitutional amendment shall be submitted to the voters at an election to be held on November 5, 1985. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to protect public funds by authorizing prior approval of expenditure or emergency transfer of state appropriations."

The amendment was read and was adopted.

Senator Jones offered the following amendment to the resolution:

Floor Amendment No. 2

Amend **C.S.H.J.R. 72** by striking all above the enacting clause and substituting in lieu thereof the following:

Proposing a constitutional amendment authorizing the legislature to require the prior approval of the expenditure of emergency transfer of other appropriated funds.

The amendment was read and was adopted.

The resolution as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 72 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.J.R. 72** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

HOUSE BILL 2168 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2168, Relating to an inservice program on the recognition of dyslexia and related disorders in public school students and on teaching strategies for those students.

The bill was read second time and was passed to third reading.

HOUSE BILL 2168 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2168** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

SENATE BILL 639 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 639** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - T. Smith

Substitute the following for **S.B. 639**:

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Controlled Substances Act and to the addition to and reclassification of certain substances in schedules and penalty groups; proceedings related to the denial, revocation, or suspension of registrations required under the Act; offenses related to the possession of controlled substances; offenses related to controlled substances placed in schedules by administrative action; the penalty for the investment of funds obtained in violation of the Act if the person has previously been convicted under the Act; requirements for transcribing certain prescriptions for controlled substances under the Act; definitions under the Act; records and reports required to be maintained under the Act; the cost of production of certain forms; certain commercial and fraud offenses under the Act and the imposition of civil penalties for certain activities; forfeiture proceedings under the Act and the disposition of proceeds from forfeiture; and to the continued effect of certain provisions of the Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. DEFINITIONS. For the purposes of this Act:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of his employment.

(3) [~~"Bureau" means the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice or its successor agency.~~

[~~(4)~~] "Commissioner" means the Commissioner of Health of the State Department of Health or his designee.

(4) [~~(5)~~] "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I through V and Penalty Groups 1 through 4 of this Act.

[~~(6) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) or its successor.~~]

(5) [~~(7)~~] "Counterfeit substance" means:

(A) a substance which is purported to be a controlled substance but is chemically different from the controlled substance it is purported to be; or

(B) a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) [~~(8)~~] "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, counterfeit substance, abusable glue or aerosol paint, or drug paraphernalia, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance, counterfeit substance, abusable glue or aerosol paint, or drug paraphernalia. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(7) "Designated agent" means an individual designated under Section 3.08(c) of this Act and in accordance with rules of the Department of Public Safety to communicate a practitioner's instructions to a pharmacist.

(8) [~~(9)~~] "Director" means the Director of the Texas Department of Public Safety or an employee of the department designated by him.

(9) [~~(10)~~] "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(10) [~~(11)~~] "Dispenser" means a practitioner, institutional practitioner, pharmacist, or pharmacy that [~~person who~~] dispenses a controlled substance.

(11) [~~(12)~~] "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(12) [~~(13)~~] "Distributor" means a person who distributes.

(13) [~~(14)~~] "Drug" means:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) any substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(D) any substance intended for use as a component of any substance specified in Subdivision (A), (B), or (C) of this subsection. It does not include devices or their components, parts, or accessories.

(14) "Drug paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing,

preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this Act or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act. It includes, but is not limited to:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(B) a kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(15) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) or its successor.

(16) "Federal Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(17) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 2, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes); or

(B) an ambulatory surgical center that is licensed by the Texas Board of Health and is approved by the United States government to perform surgery paid by Medicaid on patients admitted for a period of not more than 24 hours.

(18) [~~(15)~~] "Immediate precursor" means a substance which the commissioner has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of such controlled substance.

(19) "Institutional practitioner" means an intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(20) "Lawful possession" means the possession of a controlled substance that has been obtained in accordance with state or federal law.

(21) [~~(16)~~] "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(22) [~~(17)~~] "Marihuana" means the plant Cannabis sativa L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin; nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(23) "Medical purpose" means the use of a controlled substance for the purpose of relieving or curing a mental or physical disease or infirmity.

(24) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(25) [~~(18)~~] "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and any salt, compound, derivative, or preparation of opium or opiates;

(B) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subdivision (A) of this subsection, but not including the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) cocaine, including its salts, isomers (whether optical, position, or geometric) and salts of those isomers; coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, [~~isomer,~~] derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(26) [~~(19)~~] "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 2.09 of this Act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(27) [~~(20)~~] "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(28) "Patient" means a human or animal for which a drug is administered, dispensed, delivered, or prescribed by a practioner.

(29) [~~(21)~~] "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(30) "Pharmacist" means a person licensed by the State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(31) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this Act and other laws relating to pharmacy.

(32) "Pharmacy" means a facility licensed by the State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.

(33) [~~(22)~~] "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(34) [~~(23)~~] "Possession" means actual care, custody, control or management.

(35) [~~(24)~~] "Practitioner" means:

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(36) "Prescribe" means the act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(37) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient which specifies the date of issue, the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner, the name and quantity of the controlled substance prescribed, and directions for use of the drug.

(38) "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance, but does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(39) [~~(25)~~] "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(40) "Raw material" means a compound, material, substance, or equipment that is used or intended for use, alone or in any combination, in manufacturing, compounding, or processing a controlled substance.

(41) "Registrant" means a person who is registered under Section 3.03 of this Act.

(42) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(43) "Triplicate prescription form" means an official Department of Public Safety prescription form used to administer, dispense, prescribe, or deliver to an ultimate user a controlled substance in Schedule II of this Act.

(44) [~~(26)~~] "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

[~~(27) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient which specifies the date of issue, the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner, the name and quantity of the controlled substance prescribed, and directions for use of the drug.~~

[~~(28) "Raw material" means a compound, material, substance, or equipment that is used or intended for use, alone or in any combination, in manufacturing, compounding, or processing a controlled substance.~~

[~~(29) "Drug paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this Act or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act. It includes, but is not limited to:~~

[~~(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;~~

[~~(B) a kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;~~

[~~(C) an isomerization device used or intended for use in increasing the potency of any species of plant that is a controlled substance;~~

[~~(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;~~

[~~(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;~~

[~~(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;~~

[~~(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;~~

[~~(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;~~

[~~(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;~~

[~~(J) a container or other object used or intended for use in storing or concealing a controlled substance;~~

[~~(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and~~

~~[(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:~~

~~[(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;~~

~~[(ii) a water pipe;~~

~~[(iii) a carburetion tube or device;~~

~~[(iv) a smoking or carburetion mask;~~

~~[(v) a chamber pipe;~~

~~[(vi) a carburetor pipe;~~

~~[(vii) an electric pipe;~~

~~[(viii) an air-driven pipe;~~

~~[(ix) a chillum;~~

~~[(x) a bong; or~~

~~[(xi) an ice pipe or chiller.~~

~~[(30) "Believes" means, with respect to circumstances surrounding the conduct of an actor, that the actor has formed in his mind a conviction or assurance of the existence of such circumstances, even though such circumstances may not actually exist. Proof that an actor "believes" in the existence of certain circumstances must include evidence that the actor has received information giving him reasonable cause to believe such circumstances exist, and evidence that the actor then takes action or makes statements indicating his reliance upon such information. Proof that an actor "believes" in the existence of circumstances surrounding his conduct must be corroborated by a person other than the person informing the actor of such circumstances, or by evidence other than a statement of the person providing such information. An actor's belief in the existence of surrounding circumstances can be used to show his culpable mental state where expressly permitted in this Act.]~~

SECTION 2. Sections 2.03, 2.04, 2.05, 2.06, and 2.07, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.03. SCHEDULE I. (a) Schedule I shall consist of the controlled substances listed in this section.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Alfentanil;

[~~(1)~~] Allylprodine;

Alpha-methylfentanyl or another derivative of Fentanyl;

[~~(2)~~] Benzethidine;

[~~(3)~~] Betaprodine;

[~~(4)~~] Clonitazene;

[~~(5)~~] Diampromide;

[~~(6)~~] Diethylthiambutene;

[~~(7)~~] Difenoxin;

[~~(8)~~] Dimenoxadol;

[~~(9)~~] Dimethylthiambutene;

[~~(10)~~] Dioxaphetyl butyrate;

[~~(11)~~] Dipipanone;

[~~(12)~~] Ethylmethylthiambutene;

[~~(13)~~] Etonitazene;

[~~(14)~~] Etoxeridine;

[~~(15)~~] Furethidine;

[~~(16)~~] Hydroxypethidine;
[~~(17)~~] Ketobemidone;
[~~(18)~~] Levophenacylmorphan;
[~~(19)~~] Meprodine;
[~~(20)~~] Methadol;
[~~(21)~~] Moramide;
[~~(22)~~] Morpheridine;
[~~(23)~~] Noracymethadol;
[~~(24)~~] Norlevorphanol;
[~~(25)~~] Normethadone;
[~~(26)~~] Norpipanone;
[~~(27)~~] Phenadoxone;
[~~(28)~~] Phenampromide;
Phencyclidine;
[~~(29)~~] Phenomorphan;
[~~(30)~~] Phenoperidine;
[~~(31)~~] Piritramide;
[~~(32)~~] Proheptazine;
[~~(33)~~] Properidine;
[~~(34)~~] Propiram;
Tilidine;
[~~(35)~~] Trimeperidine[;
[~~(36) Phencyclidine~~].

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

[~~(1)~~] Acetorphine;
[~~(2)~~] Acetyldihydrocodeine;
[~~(3)~~] Benzylmorphine;
[~~(4)~~] Codeine methylbromide;
[~~(5)~~] Codeine-N-Oxide;
[~~(6)~~] Cyprenorphine;
[~~(7)~~] Desomorphine;
[~~(8)~~] Dihydromorphine;
[~~(9)~~] Drotebanol;
[~~(10)~~] Etorphine (except hydrochloride salt);
[~~(11)~~] Heroin;
[~~(12)~~] Hydromorphinol;
[~~(13)~~] Methyldesorphine;
[~~(14)~~] Methyldihydromorphine;
[~~(15)~~] Monoacetylmorphine;
[~~(16)~~] Morphine methylbromide;
[~~(17)~~] Morphine methylsulfonate;
[~~(18)~~] Morphine-N-Oxide;
[~~(19)~~] Myrophine;
[~~(20)~~] Nicocodeine;
[~~(21)~~] Nicomorphine;
[~~(22)~~] Normorphine;
[~~(23)~~] Pholcodine;
[~~(24)~~] Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers

is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

[~~(1)~~] 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

[~~(2)~~] 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

5-methoxy-3, 4-methylenedioxy amphetamine;

[~~(3)~~] 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

[~~(4) 5-methoxy-3, 4-methylenedioxy amphetamine;~~]

1-methyl-4-phenyl-1, 2, 5, 6-tetrahydro-pyridine (MPTP);

1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP);

[~~(5)~~] 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

3, 4-methylene-dioxy methamphetamine (MDMA, MDM);

[~~(6)~~] 3, 4-methylenedioxy amphetamine;

[~~(7)~~] 3, 4, 5-trimethoxy amphetamine;

[~~(8)~~] Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

[~~(9)~~] Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

[~~(10)~~] Dimethyltryptamine (Some trade and other names: DMT);

Ethylamine Analog of Phencyclidine (Some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

[~~(11)~~] Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta, 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga);

[~~(12)~~] Lysergic acid diethylamide;

[~~(13)~~] Marihuana;

[~~(14)~~] Mescaline;

[~~(15) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant presently classified botanically as Lophophora, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts;~~

[~~(16)~~] N-ethyl-3-piperidyl benzilate;

[~~(17)~~] N-methyl-3-piperidyl benzilate;

Parahexyl (Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-tri-methyl-6H-dibenzo [b,d] pyran; Synhexyl);

Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant presently classified botanically as Lophophora, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts;

[~~(18)~~] Psilocybin;

[~~(19)~~] Psilocin;

Pyrrolidine Analog of Phencyclidene (Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP)

[~~(20) Tetrahydrocannabinols~~].

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and/or synthetic substances, derivatives, and their

isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

Tetrahydrocannabinols;

[~~(21)~~] Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP).[;]

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

[~~(1)~~] Fenethylline;

[~~(2)~~] Mecloqualone;

Methaqualone;

N-ethylamphetamine; and

[~~(3)~~] Nitrazepam.

Sec. 2.04. SCHEDULE II. (a) Schedule II shall consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:

[~~(A) Raw opium;~~

[~~(B) Opium extracts;~~

[~~(C) Opium fluid extracts;~~

[~~(D) Powdered opium;~~

[~~(E) Granulated opium;~~

[~~(F) Tincture of opium;~~

[~~(G)~~] Codeine;

[~~(H)~~] Ethylmorphine;

[~~(I)~~] Etorphine hydrochloride;

Granulated opium;

[~~(J)~~] Hydrocodone;

[~~(K)~~] Hydromorphone;

[~~(L)~~] Metopon;

[~~(M)~~] Morphine;

Opium extracts;

Opium fluid extracts;

[~~(N)~~] Oxycodone;

[~~(O)~~] Oxymorphone;

Powdered opium;

Raw opium;

[~~(P)~~] Thebaine;

Tincture of opium;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in

paragraph (1) of this subsection, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including its salts, isomers (whether optical, position, or geometric) and salts of such isomers; coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy)[;

[~~(6) 1-Phenylcyclohexylamine; and~~

[~~(7) 1-Piperidinocyclohexane-Carbonitrile~~].

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

[~~(1)~~] Alphaprodine;

[~~(2)~~] Anileridine;

[~~(3)~~] Bezitramide;

Dextropropoxyphene, Bulk (nondosage form);

[~~(4)~~] Dihydrocodeine;

[~~(5)~~] Diphenoxylate;

[~~(6)~~] Fentanyl;

[~~(7)~~] Isomethadone;

[~~(8)~~] Levomethorphan;

[~~(9)~~] Levorphanol;

[~~(10)~~] Metazocine;

[~~(11)~~] Methadone;

[~~(12)~~] Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

[~~(13)~~] Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

[~~(14)~~] Pethidine;

[~~(15)~~] Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

[~~(16)~~] Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

[~~(17)~~] Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

[~~(18)~~] Phenazocine;

[~~(19)~~] Piminodine;

[~~(20)~~] Racemethorphan;

[~~(21)~~] Racemorphan;

Sufentanil.

(d) [~~Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine.~~

[~~(e)~~] Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

[~~(1)~~] amphetamine, its salts, optical isomers, and salts of its optical isomers;

[~~(2)~~] methamphetamine, including its salts, optical isomers, and salts of optical isomers;

[~~(3)~~] methylphenidate and its salts; and

[~~(4)~~] phenmetrazine and its salts.

(e) [~~(f)~~] Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a

depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

[~~(1) Methaqualone;~~

[~~(2)~~] Amobarbital;

[~~(3)~~] Secobarbital;

[~~(4)~~] Pentobarbital.

(f) Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

Phenylacetone (Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(3) Immediate precursors to phencyclidine (PCP):

1-phenylcyclohexylamine;

1-piperidinocyclohexanecarbonitrile (PCC).

Sec. 2.05. SCHEDULE III. (a) Schedule III shall consist of the controlled substances listed in this section.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Any [~~(1) any~~] compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule;

Any [~~(2) any~~] suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

Any [~~(3) any~~] substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

[~~(4)~~] Chlorhexadol;

[~~(5)~~] Glutethimide;

[~~(6)~~] Lysergic acid;

[~~(7)~~] Lysergic acid amide;

[~~(8)~~] Methyprylon;

[~~(9)~~] Sulfondiethylmethane;

[~~(10)~~] Sulfonethylmethane;

[~~(11)~~] Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

Not [~~(1) not~~] more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

Not [~~(2) not~~] more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(3) not~~] more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

Not [~~(4) not~~] more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(5) not~~] more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(6) not~~] more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

Not [~~(7) not~~] more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(8) not~~] more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d) [~~(c)~~] of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:

[~~(1)~~] Benzphetamine;
[~~(2)~~] Chlorphentermine;
[~~(3)~~] Clortermine;
[~~(4) Mazindol;~~]
[~~(5)~~] Phendimetrazine.

Sec. 2.06. SCHEDULE IV. (a) Schedule IV shall consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Alprazolam;
[~~(1)~~] Barbital;
[~~(2)~~] Chloral betaine;
[~~(3)~~] Chloral hydrate;
[~~(4)~~] Chlordiazepoxide;
[~~(5)~~] Clonazepam;
[~~(6)~~] Clorazepate;
[~~(7)~~] Diazepam;
[~~(8)~~] Ethchlorvynol;
[~~(9)~~] Ethinamate;
[~~(10)~~] Flurazepam;
Halazepam;
[~~(11)~~] Lorazepam;
[~~(12)~~] Mebutamate;
[~~(13)~~] Meprobamate;

[~~(14)~~] Methohexital;
[~~(15)~~] Methylphenobarbital;
[~~(16)~~] Oxazepam;
[~~(17)~~] Paraldehyde;
[~~(18)~~] Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
[~~(19)~~] Petrichloral;
[~~(20)~~] Phenobarbital;
[~~(21)~~] Prazepam;
Temazepam;
Triazolam.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific designation:

[~~(1)~~] Diethylpropion;
[~~(2) Phentermine;~~]
[~~(3)~~] Fenfluramine;
Mazindol;
[~~(4)~~] Pemoline (including organometallic complexes and chelates thereof);
Phentermine;
Pipradol;
SPA [(-)-1-dimethyamino-1, 2-diphenylethane].

(e) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

[~~(1)~~] Dextropropoxyphene (Alpha-(§)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

[~~(1)~~] Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Sec. 2.07. SCHEDULE V. (a) Schedule V shall consist of the controlled substances listed in this section.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

Not [~~(1) not~~] more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

Not [~~(2) not~~] more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

Not [~~(3) not~~] more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

Not [~~(4) not~~] more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not [~~(5) not~~] more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams;[~~:~~]

Not [~~(6) not~~] more than 0.5 milligram of difenoxin and not less than 25 milligrams of atropine sulfate per dosage unit.

[~~(c) Loperamide.~~]

SECTION 3. Section 3.04(a), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended, denied, or revoked in accordance with this Act upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this Act;

(2) has been convicted of a felony offense under any state or federal law relating to any controlled substance or convicted of any other felony;

(3) has had his registration under the Federal Controlled Substances Act suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) has had his practitioner's license under the laws of this state suspended or revoked;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws now in effect or hereafter promulgated; [~~or~~]

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act; or

(7) has violated a provision of this Act or a rule adopted under this Act.

SECTION 4. Section 3.05(a), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A registration under this Act may be revoked or suspended for cause set forth in Section 3.04 by any district court of this state. The attorney representing the state[~~;~~] in the various district courts or the attorney general shall [~~have the authority, and it shall be his duty, to~~] file and prosecute appropriate judicial proceedings for the suspension or revocation of a registrant under this Act upon presentation of competent evidence by the director. A proceeding under this section may be maintained in the county of residence of the registrant, in the county where the registrant maintains a place of business or practice, [~~or~~] in the county in which a wrongful act under Section 3.04 was committed, or in Travis County.

SECTION 5. Sections 3.06 and 3.08, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3.06. RECORDS OF REGISTRANTS. (a) Persons registered to manufacture, distribute, analyze, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with recordkeeping and inventory requirements of federal law and with any additional rules the director issues. Records and inventories must be retained for a period of not less than two years from the date they are made.

(b) The pharmacist-in-charge of a pharmacy is responsible for maintaining records and inventories required by this section.

Sec. 3.08. PRESCRIPTIONS. (a) No controlled substance in Schedule II may be dispensed or administered without the written prescription of a practitioner on a form that meets the requirements of and is filled in by the practitioner in accordance with Section 3.09 of this Act, except that:

(1) in emergency situations, as defined by rule of the director, Schedule II controlled substances [~~drugs~~] may be dispensed or administered upon the oral or telephonically communicated prescription of a practitioner, reduced promptly to

writing by the pharmacy or (in the case of an emergency authorization to administer) the person administering the Schedule II controlled substance [~~drug~~], who [~~which~~] shall include in the written record of the oral or telephonically communicated prescription the name, address, and Federal Drug Enforcement Administration number of the prescribing practitioner, all information required to be provided by the practitioner under Subsection (c) of Section 3.09 of this Act, and all information required to be provided by the dispensing pharmacist under Subsection (e) of Section 3.09 of this Act and shall send a copy of the written record to the Department of Public Safety within 30 days from the date the prescription is filled; and

(2) a medication order [~~prescription~~] written for a patient who is admitted to a hospital at the time the medication order [~~prescription~~] is written and filled is not required to be on a form that meets the requirements of Section 3.09 of this Act, and the provisions of Section 3.09 of this Act do not apply to those medication orders [~~are not applicable to such prescriptions~~]. [~~No prescription for a Schedule II substance may be refilled.~~]

(b) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, shall not be dispensed without a written, oral, or telephonically communicated prescription of a practitioner. A prescription for a Schedule III or IV drug shall not be filled or refilled more than six months after the initial date of the prescription [~~thereof~~] or be refilled more than five times, unless renewed by the practitioner.

(c) A telephonically communicated prescription of a practitioner under this subchapter may be communicated only by the practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone. Such telephonically communicated prescriptions shall be reduced promptly to writing by the pharmacy and filed and retained in conformity with this subchapter. The written designation of an agent authorized to communicate prescriptions shall be maintained in the usual place of business of the practitioner and shall be available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety. If a practitioner designates a different person as a designated agent, the practitioner shall designate the new agent in writing and maintain the written designation in the same manner in which the practitioner initially designated an agent under this subsection.

(d) Not later than 72 hours after authorizing an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written prescription, completed in accordance with Section 3.09 of this Act, to be delivered to the dispensing pharmacist. The written prescription may be delivered to the pharmacist in person or by mail. If the prescription is delivered by mail, the envelope must be postmarked during the 72-hour period after the prescription was authorized. On receipt of the prescription, the dispensing pharmacist shall file the transcription of the telephonically communicated prescription, written under Subsection (c) of this section, and the pharmacy copy. The pharmacist shall send to the Department of Public Safety the department's copy not later than the 30th day after the date the prescription was filled.

(e) Upon request from a pharmacist, the practitioner shall furnish a copy of such written designation of an agent authorized to communicate prescriptions on behalf of such practitioner. Nothing herein shall be construed as to relieve such a practitioner or his designated agent from the requirements of Section 40 of the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), and such practitioner shall be personally responsible for the actions for such designated agent in communicating prescriptions to a pharmacist.

(f) [~~(e)~~] A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07, of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the initial date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(g) A [~~(f) No~~] prescription for a Schedule II controlled substance may not [~~narcotic drugs shall~~] be filled after the end of the second day following the day on which the prescription was issued. A prescription for a Schedule II controlled substance may not be refilled.

(h) [~~(g)~~] A practitioner, as defined by Section 1.02(35)(A) [~~1.02(24)(A)~~] of this Act, may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under his direction and supervision except for a valid medical purpose and in the course of professional practice.

(i) [~~(h)~~] No person may administer or dispense a controlled substance in Schedule I, except as otherwise authorized by this Act.

(j) A person may not obtain triplicate prescription forms unless the person is a practitioner or an institutional practitioner.

(k) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice; or

(2) fill a prescription that is not prepared or issued as prescribed by this Act.

(l) A practitioner or institutional practitioner may not allow a patient, on the patient's release from the hospital, to possess a controlled substance prescribed by the practitioner unless:

(1) the substance was dispensed under a medication order while the patient was admitted to the hospital;

(2) the substance is in a properly labeled container; and

(3) the patient possesses not more than a seven-day supply of the substance.

SECTION 6. Section 3.09(a), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as otherwise provided in Subsection (a) of Section 3.08 of this Act, each prescription for a controlled substance in Schedule II must be recorded on a prescription form that meets the requirements of Subsection (b) of this section and that is issued to practitioners [~~at cost~~] by the Department of Public Safety for a fee that reflects the actual cost of printing and processing the forms, mailing containers, and binders and of mailing the forms at 100 forms per package. No more than one such prescription shall be recorded on each form. Before delivering forms to a practitioner, the department shall print on the forms the name, address, valid Department of Public Safety registration number, and valid Federal Drug Enforcement Administration [~~federal drug enforcement administration~~] number of the practitioner.

SECTION 7. Section 4.012(b), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An offense under this section is punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than:

(1) 10 years, and a fine not to exceed $100,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(1), 4.031(d)(1), 4.032(d)(1), 4.04(d)(1), 4.041(d)(1), 4.042(d)(1), 4.043(d)(1), 4.05(d)(1), or 4.051(d)(1)[~~, or 4.052(b)~~];

(2) 15 years, and a fine not to exceed $250,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(2), 4.031(d)(2), 4.032(d)(2), 4.04(d)(2), 4.041(d)(2), 4.042(d)(2), 4.043(d)(2), 4.05(d)(2), or 4.051(d)(2); [~~and~~]

(3) 20 years, and a fine not to exceed $500,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(3), 4.05(d)(3), or 4.051(d)(3); and

(4) 10 years, and a fine of not less than $100,000, nor more than $1 million, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.052(b).

SECTION 8. Subsections (b), (c), (d), and (e), Section 4.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Penalty Group 1. Penalty Group 1 shall include the following controlled substances:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;
[~~(A)~~] Allylprodine;
[~~(B)~~] Benzethidine;
[~~(C)~~] Betaprodine;
[~~(D)~~] Clonitazene;
[~~(E)~~] Diampromide;
[~~(F)~~] Diethylthiambutene;
[~~(G)~~] Difenoxin;
[~~(H)~~] Dimenoxadol;
[~~(I)~~] Dimethylthiambutene;
[~~(J)~~] Dioxaphetyl butyrate;
[~~(K)~~] Dipipanone;
[~~(L)~~] Ethylmethylthiambutene;
[~~(M)~~] Etonitazene;
[~~(N)~~] Etoxeridine;
[~~(O)~~] Furethidine;
[~~(P)~~] Hydroxypethidine;
[~~(Q)~~] Ketobemidone;
[~~(R)~~] Levophenacylmorphan;
[~~(S)~~] Meprodine;
[~~(T)~~] Methadol;
[~~(U)~~] Moramide;
[~~(V)~~] Morpheridine;
[~~(W)~~] Noracymethadol;
[~~(X)~~] Norlevorphanol;
[~~(Y)~~] Normethadone;
[~~(Z)~~] Norpipanone;
[~~(AA)~~] Phenadoxone;
[~~(BB)~~] Phenampromide;
[~~(CC)~~] Phenomorphan;
[~~(DD)~~] Phenoperidine;
[~~(EE)~~] Piritramide;
[~~(FF)~~] Proheptazine;
[~~(GG)~~] Properidine;
[~~(HH)~~] Propiram;

[~~(H)~~] Sufentanil;
Tilidine;
Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

[~~(A)~~] Acetorphine;
[~~(B)~~] Acetyldihydrocodeine;
[~~(C)~~] Benzylmorphine;
[~~(D)~~] Codeine methylbromide;
[~~(E)~~] Codeine-N-Oxide;
[~~(F)~~] Cyprenorphine;
[~~(G)~~] Desomorphine;
[~~(H)~~] Dihydromorphine;
[~~(I)~~] Drotebanol;
[~~(J)~~] Etorphine, except hydrochloride salt;
[~~(K)~~] Heroin;
[~~(L)~~] Hydromorphinol;
[~~(M)~~] Methyldesorphine;
[~~(N)~~] Methyldihydromorphine;
[~~(O)~~] Monoacetylmorphine;
[~~(P)~~] Morphine methylbromide;
[~~(Q)~~] Morphine methylsulfonate;
[~~(R)~~] Morphine-N-Oxide;
[~~(S)~~] Myrophine;
[~~(T)~~] Nicocodeine;
[~~(U)~~] Nicomorphine;
[~~(V)~~] Normorphine;
[~~(W)~~] Pholcodine;
[~~(X)~~] Thebacon.

(3) Any of the following substances, except those narcotic drugs listed in another group, however produced:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:

[~~(i) Raw opium;~~
[~~(ii) Opium extracts;~~
[~~(iii) Opium fluid extracts;~~
[~~(iv) Powdered opium;~~
[~~(v) Granulated opium;~~
[~~(vi) Tincture of opium;~~
[~~(vii)~~] Codeine;
[~~(viii)~~] Ethylmorphine;
Granulated opium;
[~~(ix)~~] Hydrocodone;
[~~(x)~~] Hydromorphone;
[~~(xi)~~] Metopon;
[~~(xii)~~] Morphine;
Opium extracts;
Opium fluid extracts;
[~~(xiii)~~] Oxycodone;
[~~(xiv)~~] Oxymorphone;
Powdered opium;
Raw opium;

[~~(xv)~~] Thebaine;
Tincture of opium;
(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (A), but not including the isoquinoline alkaloids of opium;
(C) Opium poppy and poppy straw;
(D) Cocaine, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers;[~~,~~] coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;
(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).
(4) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
[~~(A)~~] Alphaprodine;
[~~(B)~~] Anileridine;
[~~(C)~~] Bezitramide;
[~~(D)~~] Dihydrocodeine;
[~~(E)~~] Diphenoxylate;
[~~(F)~~] Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;
[~~(G)~~] Isomethadone;
[~~(H)~~] Levomethorphan;
[~~(I)~~] Levorphanol;
[~~(J)~~] Metazocine;
[~~(K)~~] Methadone;
[~~(L)~~] Methadone-Intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;
[~~(M)~~] Moramide-Intermediate,
2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
[~~(N)~~] Pethidine;
[~~(O)~~] Pethidine-Intermediate-A,
4-cyano-1-methyl-4-phenylpiperidine;
[~~(P)~~] Pethidine-Intermediate-B,
ethyl-4-phenylpiperidine-4 carboxylate;
[~~(Q)~~] Pethidine-Intermediate-C,
1-methyl-4-phenylpiperidine-4-carboxylic acid;
[~~(R)~~] Phenazocine;
[~~(S)~~] Piminodine;
[~~(T)~~] Racemethorphan;
[~~(U)~~] Racemorphan.
(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers.
(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers.
(7) [~~1-Phenylcyclohexylamine;~~
[~~(8)~~] Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;
[~~(9) 1-Piperidinocyclohexane-Carbonitrile;~~]
(8) [~~(10)~~] Phencyclidine, including its salts.
(c) Penalty Group 2. Penalty Group 2 shall include the following controlled substances: (1) Any quantity of the following hallucinogenic substances, their

salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

[~~(A)~~] 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

~~[(B) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);~~

~~[(C) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);~~

~~[(D) 5-methoxy-3, 4-methylenedioxy amphetamine;~~

~~[(E) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");~~

~~[(F) 3, 4-methylenedioxy amphetamine;~~

~~[(G) 3, 4, 5-trimethoxy amphetamine;~~

[~~(H)~~] Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

[~~(I)~~] Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

[~~(J)~~] Dimethyltryptamine (Some trade and other names: DMT);

Ethylamine Analog of Phencyclidine (Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

[~~(K)~~] Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13[;]-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2'[;]:1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

[~~(L)~~] Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

3,4-methylene-dioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

[~~(M)~~] N-ethyl-3-piperidyl benzilate;

[~~(N)~~] N-methyl-3-piperidyl benzilate;

[~~(O)~~] Parahexyl (Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexane-Carbonitrile (PCC);

Psilocin;

[~~(P)~~] Psilocybin;

Pyrrolidine Analog of Phencyclidine (Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

[~~(Q)~~] Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives

of Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

[~~(R)~~] Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; $TPCP_2$, TCP)[;];

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (Some trade or other names: Phenyl-2-propanone; P-2-P, Benzymethyl ketone, methyl benzyl ketone);

(3) Unless specifically excepted or unless listed in another Penalty Group, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Etorphine Hydrochloride;

Fenethylline and its salts;

Mecloqualone and its salts;

Methaqualone and its salts;

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers.

[~~(S) Etorphine Hydrochloride.~~]

(d) Penalty Group 3. Penalty Group 3 shall include the following controlled substances:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

[~~(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;~~

[~~(B) Fenethylline;~~

[~~(C)~~] Methylphenidate and its salts;

[~~(D)~~] Phenmetrazine and its salts. [;]

(2) [~~Methaqualone;~~

[~~(3) Mecloqualone.~~

[~~(4)~~] Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

[~~(A)~~] Any substances which contain any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

[~~(B)~~] Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients which are not listed in any schedule;

[~~(C)~~] Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

[~~(D)~~] Alprazolam;

Amobarbital;

[~~(E) Secobarbital;~~

[~~(F) Pentobarbital;~~

[~~(G)~~] Chlordiazepoxide;

Chlorhexadol;

[~~(H)~~] Clonazepam;
[~~(I)~~] Clorazepate;
[~~(J) Chlorhexadol;~~]
[~~(K)~~] Diazepam;
[~~(L)~~] Flurazepam;
[~~(M)~~] Glutethimide;
Halazepam;
[~~(N)~~] Lorazepam;
[~~(O)~~] Lysergic acid, including its salts, isomers, and salts of isomers;
[~~(P)~~] Lysergic acid amide, including its salts, isomers, and salts of isomers;
[~~(Q)~~] Mebutamate;
[~~(R)~~] Methyprylon;
[~~(S)~~] Nitrazepam;
[~~(T)~~] Oxazepam;
[~~(U)~~] Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
Pentobarbitol;
[~~(V)~~] Prazepam;
Secobarbitol;
[~~(W)~~] Sulfondiethylmethane;
[~~(X)~~] Sulfonethylmethane;
[~~(Y)~~] Sulfonmethane;
Temazepam;
Triazolam.

(3) [~~(5)~~] Nalorphine.

(4) [~~(6)~~] Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

Not [~~(A) not~~] more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

Not [~~(B) not~~] more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(C) not~~] more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

Not [~~(D) not~~] more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(E) not~~] more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(F) not~~] more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(G) not~~] more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not [~~(H) not~~] more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;[:]

Not [~~(I) not~~] more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) [~~(7)~~] Any compound, mixture, or preparation containing any stimulant listed in Subsection (d)(1) of this section or depressant substance listed in Subsection

(d)(2) [~~(4)~~] of this section is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(6) [~~(8)~~] Any material, compound, mixture or preparation which contains any quantity of the following substances:

[~~(A)~~] Barbital;
[~~(B)~~] Chloral betaine;
[~~(C)~~] Chloral hydrate;
[~~(D)~~] Ethchlorvynol;
[~~(E)~~] Ethinamate;
[~~(F)~~] Methohexital;
[~~(G)~~] Meprobamate;
[~~(H)~~] Methylphenobarbital;
[~~(I)~~] Paraldehyde;
[~~(J)~~] Petrichloral;
[~~(K)~~] Phenobarbital.

(7) [~~(9)~~] Any compound, mixture or preparation containing any depressant substance listed in Subsection (d)(6) [~~(8)~~] is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(8) [~~(10)~~] Peyote, unless unharvested and growing in its natural state, (meaning all parts of the plant presently classified botanically as Lophophora, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts);

(9) [~~(11)~~] Unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of its isomers, if the existence of the salts, isomers, and salts of isomers is possible, within the specific chemical designation:

[~~(A)~~] Benzphetamine;
[~~(B)~~] Chlorphentermine;
[~~(C)~~] Clortermine;
[~~(D)~~] Diethylpropion;
[~~(E)~~] Fenfluramine;
[~~(F)~~] Mazindol;
[~~(G)~~] Pemoline (including organometallic complexes and chelates thereof);
[~~(H)~~] Phendimetrazine;
[~~(I)~~] Phentermine;
Pipradrol;
SPA [(-)-1-dimethylamino-1,2-diphenylethane].

(10) [~~(12)~~] OTHER SUBSTANCES. Unless specifically excepted or unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

[~~(A)~~] Dextropropoxyphene (Alpha-(§)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(e) Penalty Group 4. Penalty Group 4 shall include the following controlled substances:

[~~(1)~~] Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

Not [~~(A) not~~] more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

Not [~~(B) not~~] more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

Not [~~(C) not~~] more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

Not [~~(D) not~~] more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not [~~(E) not~~] more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams;

Not [~~(F) not~~] more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

[~~(2) Loperamide.~~]

SECTION 9. Subchapter 4, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended by adding Section 4.044 to read as follows:

Sec. 4.044. MANUFACTURE, DELIVERY, AND POSSESSION OF SUBSTANCE NOT IN PENALTY GROUP. (a) A person commits an offense if the person knowingly or intentionally manufactures or delivers, or possesses with intent to manufacture or deliver, a controlled substance that is listed in a schedule, by virtue of an action of the commissioner in accordance with this Act, but is not listed in a penalty group. An offense under this subsection is a Class A misdemeanor.

(b) A person commits an offense if the person knowingly or intentionally possesses a controlled substance that is listed in a schedule, by virtue of an action of the commissioner in accordance with this Act, but is not listed in a penalty group. An offense under this subsection is a Class B misdemeanor.

SECTION 10. Sections 4.08 and 4.09, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4.08. COMMERCIAL OFFENSES. (a) It is unlawful for any registrant or dispenser to knowingly or intentionally [~~person~~]:

(1) [~~who is a practitioner knowingly or intentionally to~~] distribute, deliver, administer, or dispense a controlled substance in violation of Section 3.08 or 3.09 of this Act;

(2) [~~who is a registrant knowingly or intentionally to~~] manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other person;

(3) [~~to~~] refuse or fail to make, keep, or furnish any record, report, notification, order form, statement, invoice, or information required under this Act or required by rules adopted by the director;

(4) print, manufacture, possess, or produce triplicate prescription forms without the approval of the Department of Public Safety;

(5) deliver or possess a counterfeit triplicate prescription;

(6) [~~(4) to~~] refuse an entry into any premises for any inspection authorized by this Act; or

(7) [~~(5) to~~] refuse or fail to return triplicate prescription forms as required by Subsection (f) of Section 3.09 of this Act.

(b) An offense under this section is a felony of the second degree unless the person has been previously convicted of an offense under this subsection, in which case it is a felony of the first degree.

(c) If a person negligently commits an act that would otherwise be an offense under this section, the person is liable to the state for a civil penalty of not less than $5,000 nor more than $10,000 for each act. The district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

Sec. 4.09. FRAUD OFFENSES. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant or a dispenser a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 3.07 of this Act;

(2) to use in the course of the manufacture, prescribing, or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person or to use a triplicate prescription form issued to another person to prescribe a controlled substance;

(3) to acquire, obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge or through use of a fraudulent prescription form or fraudulent oral or telephonically communicated prescription;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; [or]

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance;

(6) to manufacture, deliver, or possess with intent to deliver a counterfeit substance;

(7) to deliver a prescription or a prescription form for other than a valid medical purpose and in the course of professional practice; or

(8) to possess a prescription for a controlled substance or any prescription form unless the prescription or prescription form is possessed:

(A) during the bona fide manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) pursuant to a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator empowered to enforce this Act within the scope of his official duties.

(b) An offense under Subsection (a) with respect to:

(1) a controlled substance classified in Schedule I or II is a felony of the second degree;

(2) a controlled substance classified in Schedule III is a felony of the third degree;

(3) a controlled substance classified in Schedule IV or V is a Class B misdemeanor;

(4) a counterfeit substance is a Class A misdemeanor;

(5) delivery of a prescription for a controlled substance classified in Schedule II is a felony of the second degree;

(6) delivery of a prescription for a controlled substance in Schedules III, IV, or V is a felony of the third degree;

(7) possession of a prescription for a controlled substance in Schedule II or III is a felony of the third degree;

(8) possession of a prescription for a controlled substance in Schedule IV or V is a Class B misdemeanor;

(9) delivery of a prescription form is a felony of the second degree; and

(10) possession of a prescription form is a felony of the third degree.

(c) It is not a defense to prosecution under Subsection (a)(6) of this section that a person manufacturing, delivering, or possessing with an intent to deliver a counterfeit substance believed the substance was a controlled substance.

SECTION 11. Section 5.03(a), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The following are subject to forfeiture as authorized by this subchapter:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw material, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport or in any manner facilitate the transportation, sale, receipt, possession, concealment, or delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any other person shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to an [~~aggravated~~] offense under this Act that is punishable as a felony or an offense under Section 4.052 of this Act;

(6) all money, certificates of deposit, negotiable instruments, securities, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property, or other things of value used or intended for use in violation of Section 4.052 of this Act or derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act;

(7) all drug paraphernalia; and

(8) triplicate prescription forms required by this Act to be returned to the Department of Public Safety.

SECTION 12. Subsections (a) and (b), Section 5.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The director shall cooperate with federal and state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate and coordinate in training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the Federal Drug Enforcement Administration [~~bureau~~] and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders within this state, and make the information available for federal, state, and local law enforcement purposes, except that he may not furnish the name or identity of a patient or research subject whose identity could not be obtained under Subsection (c) of this section; and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the Federal Drug Enforcement Administration [~~bureau~~] and state agencies relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the director in the exercise of his regulatory functions under this Act.

SECTION 13. Section 5.07(a), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An owner of property, other than a controlled substance or raw material, that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties. At a forfeiture hearing under this section, the state may be represented by the county or district attorney in the county in which the hearing is held or, at the request of the county or district attorney, by the attorney general.

SECTION 14. Subsections (b) and (f), Section 5.08, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) All other property that has been forfeited, except the money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act, and except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

(1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state except as provided by Subsection (f) of this section.

(f) All money, securities, certificates of deposit, negotiable instruments, stocks, [~~or~~] bonds, businesses or business investments, contractual rights, real estate, personal property and other things of value, and the proceeds from the sale of an item described in this subsection that are forfeited to the seizing agencies [~~an agency~~] of the state or an agency or office of a political subdivision of the state authorized by law to employ peace officers shall be deposited in a special fund to be administered by the seizing agencies [~~agency~~] or office to which they are forfeited. Except as otherwise provided by this subsection, expenditures from this fund shall be used solely for the investigation of any alleged violations of the criminal laws of this state. The director of an agency of the state may use not more than 10 percent of the amount credited to the fund for the prevention of drug abuse and for treatment of persons with drug-related problems. The director of an agency or office of a political subdivision that has received funds under this section shall comply with the request of the governing body of the political subdivision to deposit not more than 10 percent of the amount credited to the fund into the treasury of the subdivision. The governing body of the subdivision shall use the funds received for the prevention of drug abuse and for treatment of persons with drug-related problems. Nothing in this subsection shall be construed to decrease the total salaries, expenses, and allowances which an agency or office is receiving from other sources at or from the time this subsection takes effect.

SECTION 15. Sections 5.081 and 5.14, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 5.081. [~~FORFEITURE AND~~] DESTRUCTION OF EXCESS QUANTITIES. (a) If a controlled substance or raw material is forfeited under Section 5.07(e) of this Act, the agency to which the substance or material is forfeited may destroy the substance or material provided the agency ensures that: [~~If notice is given in accordance with Subsection (b) of this section, a peace officer may file a petition before a magistrate who has jurisdiction over the subject matter asking that any controlled substance or mixture containing a controlled substance that has been seized be forfeited to the state and destroyed.~~

[~~(b) At least five days before a peace officer files a petition under Subsection (a) of this section, the sheriff of the county in which the seizure was made shall serve notice in accordance with the Texas Rules of Civil Procedure of the peace officer's intention to file the petition to each person arrested and charged with an offense under this Act related to the property which is the subject of the petition, and to each person who claims an interest in the seized property at the time notice is given. A copy of the petition must accompany each notice.~~

[~~(c) Each petition filed under this section must identify the controlled substance or mixture containing the controlled substance, establish its location, and include an affidavit stating that:~~]

(1) at least five random and representative samples have been taken from the total amount of controlled substance or mixture containing the controlled substance, and a sufficient quantity has been preserved to provide for discovery by parties entitled to discovery;

(2) photographs have been taken which reasonably demonstrate the total amount of the controlled substance or raw material [~~mixture containing the controlled substance~~]; and

(3) the gross weight or liquid measure of the controlled substance or raw material [~~mixture containing the controlled substance~~] has been determined, either by actually weighing or measuring the substance or by estimating its weight or measurement after making dimensional measurements of the total amount seized[; ~~and~~

[~~(4) after considering the difficulty and security risk of transporting and storing the substance and the nature of available storage facilities, the peace officer that has custody of the controlled substance or mixture containing the controlled substance has determined that it is not reasonably practical to preserve the substance in place, or to remove it to another location~~].

[~~(d) The magistrate shall provide an interested person an opportunity to object to the proposed destruction.~~

[~~(e) If the objection of an interested person is not sustained and the magistrate finds that the requirements of Subsections (b) and (c) of this section have been met, the magistrate shall issue an order forfeiting the controlled substance or mixture containing the controlled substance to the state and ordering the peace officer that has custody of the controlled substance or mixture containing the controlled substance to destroy it.~~

[~~(f) On destruction of the controlled substance or mixture containing the controlled substance, the peace officer accomplishing the destruction shall sign a sworn statement before the magistrate attesting to the fact that the property was destroyed, the place of destruction, and the type and quantity of controlled substance or mixture containing the controlled substance destroyed.~~]

(b) [~~(g)~~] Representative samples, photographs, and records made pursuant to this section are admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance or raw material was offered in evidence, regardless of whether or not the remainder of the substance has been destroyed. No inference or presumption of spoliation applies to substances destroyed pursuant to this section.

Sec. 5.14. REPORT OF ARRESTS. (a) All law enforcement agencies in this state shall file monthly [~~semiannually~~] with the director a report of all arrests for drug offenses made and quantities of controlled substances seized by them during the preceding month [~~six months~~]. Such reports shall be made on forms provided by the director, and shall contain such information as required therein.

(b) The director shall publish an annual summary of all drug arrests and controlled substances seized in this state.

SECTION 16. (a) Section 9, Chapter 570, Acts of the 67th Legislature, Regular Session, 1981, and Section 29, Chapter 425, Acts of the 68th Legislature, Regular Session, 1983, are repealed.

(b) Section 3, Chapter 753, Acts of the 68th Legislature, Regular Session, 1983, is repealed.

SECTION 17. (a) The change in law made by this Act applies only to offenses committed on or after the effective date of this Act and civil consequences resulting from a failure to perform a duty required by this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 18. This Act takes effect September 1, 1985.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the motion to concur.

SENATE RULE 74a SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendment to **S.B. 1298**.

SENATE BILL 1298 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 1298** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - Riley

Amend **S.B. 1298** by adding new sections 3 and 4, and renumber Section 3 accordingly:

SECTION 3. (a) The commissioners court of Williamson County shall pay the judges of the district courts having jurisdsiction in the county an annual salary set by the commissioners court in an amount not less than $5,000 for judicial and administrative services.

(b) The salary shall be paid in equal monthly installments from the county general fund.

(c) The salary is in addition to the salary paid by the state.

(d) The combined yearly salary from the county and state received by each judge of the district courts of Williamson County may not exceed an amount equal

to $1,000 less than the combined yearly salary from the state and county received by each justice of the court of appeals in the supreme judicial district in which Williamson County is located.

SECTION 4. This Act takes effect September 1, 1985.

The amendment was read.

Senator Montford moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1298** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chairman; Brown, Caperton, Sharp and Sims.

SENATE BILL 192 WITH HOUSE AMENDMENT

Senator Sharp called **S.B. 192** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Rudd

Amend **S.B. 192** by striking all below the enacting clause and substituting the following:

SECTION 1. CONVEYANCE OF PROPERTY. (a) Except as otherwise provided in this section, the chairman of the Texas Board of Corrections may convey on behalf of the Texas Board of Corrections and this state all of the interest of the state except mineral rights in the real property described in Sections 2 and 3 of this Act. The board may combine or divide the tracts as it considers appropriate to make a sale of any part or all of the land.

(b) The Texas Board of Corrections may sell the property only after advertising the sale in at least two issues of a newspaper of general circulation in Bexar, Dallas, El Paso, Fort Bend, Harris, Tarrant, and Travis counties, and in a business-oriented newspaper of national circulation that is published at least five days a week, such as The Wall Street Journal. The first advertisement must be published at least 30 days before the date the property is sold. Each advertisement shall describe the land to be sold and call for sealed bids on the property. The board shall either sell the property to the highest bidder or reject all bids and reoffer the property for sale. The board may not sell the property for less than the current appraised value.

(c) If Sections 31.158 and 31.159, Natural Resources Code, are added by Senate Bill 43, Acts of the 69th Legislature, Regular Session, 1985, the property shall be conveyed in accordance with those sections. However, notwithstanding the provisions of Senate Bill 43, Acts of the 69th Legislature, Regular Session, 1985, the asset management division of the General Land Office may not take possession of the property authorized for sale by this Act without the approval of the Texas Board of Corrections.

SECTION 2. DESCRIPTION OF PROPERTY. The real property to be conveyed under this Act consists of 19 tracts of land amounting to 1,278.9 acres, more or less, out of the Texas Department of Corrections Central Unit, 2,023.4 acres, more or less, out of the Texas Department of Corrections Jester Unit, 22.097 acres, more or less, located in Fort Bend County, Texas, and 296.82 acres, more or less, in Harris County, which are more particularly described as follows:

Tract 1: Being 76.3 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the north by U.S. Highway 90A, and on the west by Texas Highway 6.

Tract 2: Being 201.6 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the west by Texas Highway 6, and on the south by Oyster Creek.

Tract 3: Being 226.4 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the north by Voss Road, on the west by Texas Highway 6, and on the south by Oyster Creek.

Tract 4a: Being 70 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract being bounded on the north by U.S. Highway 59.

Tract 7: Being 129.7 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the north by Tract 3, and on the west by Texas Highway 6.

Tract 8a: Being 65 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the south by U.S. Highway 59 and on the west by Flanagan Road.

Tracts 8b and 8c: Being 191.1 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tracts are bounded on the south by Tract 8a and on the west by Flanagan Road and on the north by Tract 8d.

Tract 8d: Being 100 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the south by Tract 8c and on the west by Flanagan Road and on the north by Tract 9d.

Tract 9d: Being 73.8 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tract is bounded on the south by Tract 8d and on the west by Flanagan Road and on the north by Tracts 9a, 9b, and 9c.

Tracts 9a, 9b, and 9c: Being 72.2 acres more or less of the Central State Farm and located in the A. Hodge League, Fort Bend County, Texas. Said tracts are bounded on the north by Texas Highway 6 and on the west by Flanagan Road and on the south by Tract 9d.

Tract 14: Being 72.8 acres more or less of the Central State Farm and located in the A. Hodge League. Said tract is bounded on the west by Tract 15b and on the east by Texas Highway 6.

Tract 1j: Being 1,087.6 acres more or less of the Jester State Farm and located in the Andrew M. Clopper Survey and the Jesse J. Cartwright League, Fort Bend County, Texas. Said tract is bounded on the north by Madden Road and on the east by F.M. 1464 and on the west by a state prison road which is the common boundary for Tracts 1j and 2j.

Tract 2j: Being 518 acres more or less of the Jester State Farm and located in the Andrew M. Clopper Survey and the Jesse H. Cartwright League, Fort Bend County, Texas. Said tract is bounded partially on the north by Madden Road, on the west by Harlem Road and on the east by Tract 1j.

Tract 3j: Being 417.8 acres more or less of the Jester State Farm and located in the William Morton 1-1/2 League Grant, Fort Bend County, Texas. Said tract is bounded on the north by Morton Road and on the east by Harlem Road.

Tract, Blue Ridge: Being 296.82 acres more or less and located in the C. W. Adams Survey, A-101 Harris County, Texas. Said tract is partially bounded on the west by Hillcroft Street and Blue Ridge Road and on the north by Sims Bayou.

Tract, Friedenhas: Being 22.097 acres more or less and located in the E. Frieden has Survey A-513, Fort Bend County, Texas. Said tract is bounded on the south by F.M. 2234 (McHard Road).

SECTION 3. AUTHORIZATION OF ADDITIONAL CONVEYANCE OF PROPERTY. The Texas Department of Corrections with the assistance of the General Land Office shall develop a plan for the orderly conveyance of the entire Texas Department of Corrections Central Unit. The plan shall consider the economic interests of the state and provide for an orderly disposition and relocation of the operations of the Central Unit. In addition to the tracts described in Section 2 of this Act, the Texas Board of Corrections is authorized to convey any part or all of the remaining acreage of the Central Unit if it is determined that the acreage may be sold without undue disruption of the Texas Department of Corrections operations. Sales of additional acreage under this section must conform to the provisions for sale included in Section 1 of this Act.

SECTION 4. APPRAISAL AND PLAN. The property authorized to be sold by this Act may be sold only after an appraisal and plan for disposition has been prepared by the General Land Office and has been accepted by the Texas Board of Corrections.

SECTION 5. DISPOSITION OF PROCEEDS. (a) Except as otherwise provided in this section, proceeds from a conveyance under this Act shall be deposited in the general revenue fund of the state for appropriation only to the Texas Department of Corrections for use in acquiring other land or for the construction or improvement of facilities of the department.

(b) If Section 31.158, Natural Resources Code, is added by Senate Bill 43, Acts of the 69th Legislature, Regular Session, 1985, proceeds from a conveyance under this Act shall be deposited in the capital trust fund. In such event, it is the intent of the legislature that proceeds from the conveyance authorized by this Act shall be reserved to finance acquisition of land necessary for the Texas Department of Corrections or necessary for construction, repairs, or renovations of facilities of the Texas Department of Corrections.

SECTION 6. ENACTMENT OF OTHER LEGISLATION. If Senate Bill 43, Acts of the 69th Legislature, Regular Session, 1985, is enacted and if it will take effect after the effective date of this Act, the proceeds from a conveyance made under this Act and made before the effective date of Senate Bill 43 shall be deposited in a special fund in the state treasury and shall be transferred to the capital trust fund on the effective date of Senate Bill 43.

SECTION 7. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Sharp moved to concur in the House amendment.

Question - Shall the Senate concur in the House amendment to **S.B. 192**?

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1367, Relating to requisite provisions for group accident, health, or accident and health policies or group hospital contracts. (Amended)

S.B. 1443, Relating to prohibiting denial of certain salary bonuses or similar compensation or career ladder advancement because of a teacher's absence from school for observance of a religious holy day.

S.B. 283, Relating to the use of peer review committees to evaluate and mediate disputes between licensed chiropractors and persons obligated to pay a fee for chiropractic services and to qualifications of committee members. (Amended)

S.B. 1454, Relating to a supplemental appropriation to the National Guard Armory Board.

S.B. 911, Relating to postsecondary technical-vocational education, to Texas State Technical Institute, and to certain powers and duties of the coordinating board; creating a joint advisory committee. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT
HOUSE BILL 402

Senator Truan submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 402** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TRUAN	CRISS
BLAKE	JONES
HARRIS	S. JOHNSON
WHITMIRE	LEWIS
HENDERSON	JACKSON
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE RULE 74a SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 578**.

SENATE BILL 578 WITH HOUSE AMENDMENTS

Senator Parker called **S.B. 578** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Delco

Amend **S.B. 578** as follows:

(1) On page 1, line 15, between "Section 62.001." and "This chapter" insert "SHORT TITLE.".

(2) On page 1, line 17, between "Section 62.002." and "Through" insert "PURPOSE.".

(3) On page 2, line 2, between "Section 62.003." and "In this" insert "DEFINITIONS.".

(4) On page 2, line 14, between "Section 62.021." and "(a)" insert "ALLOCATIONS.".

(5) On page 5, line 7, between "Section 62.022." and "(a)" insert "ADJUSTMENT OF ALLOCATION FORMULA.".

(6) On page 5, line 23, strike "of this section" and substitute ", Section 62.021, of this code".

Committee Amendment No. 1 - Delco

Amend **S.B. 578** by adding Section 62.023 on page 6 as follows:

If any provision of this Act or the application thereof under any circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Floor Amendment No. 2 - Delco

Amend Committee Amendment No. 1 to **S.B. 578** as follows:

(1) On page 7, line 3, before "If" insert "Section 62.023. SEVERABILITY.".

(2) On page 7, lines 3, 5, and 7, strike "Act" and substitute "chapter".

Committee Amendment No. 2 - Delco

Amend **S.B. 578** by striking Section 62.022 in its entirety and substituting the following:

"SECTION 62.022 (a) Prior to the convening of the Regular Session of the Texas Legislature in 1989, the Coordinating Board, Texas College and University System, will conduct, with the full participation of the eligible institutions, a study and present recommendations to the Legislative Budget Board and to the Texas House and Texas Senate standing committees having cognizance over legislation related to higher education as to whether and, if so, how, the equitable allocation formula should be adjusted for the five-year period beginning September 1, 1990.

"(b) The Legislature shall approve, modify and approve, or reject the recommendations of the Coordinating Board.

"(c) If, prior to September 1, 1990, the Texas Legislature has failed to act on a recommendation for adjustment in the equitable allocation formula, the ten-year allocation provided for in Subsection (a) of this Section shall continue until the end of the ten-year period.

"(d) No adjustment shall be made in the allocation formula that will prevent payment of both the principal and interest on outstanding bonds and notes sold pursuant to Section 17(e), Article VII, Texas Constitution."

"(e) Prior to the convening of the Regular Session of the Texas Legislature in 1995, the Coordinating Board, Texas College and University System, will conduct, with the full participation of the eligible institutions, a study and present recommendations to the Legislative Budget Board and to the Texas House and Texas Senate standing committees having cognizance over legislation related to higher education as to the allocation of the funds appropriated by Section 17(a), Article VII, Texas Constitution for the ten year period beginning September 1, 1995."

Floor Amendment No. 3 - Delco

Amend Committee Amendment No. 2 to **S.B. 578** as follows:

(1) On page 7, line 12, strike "SECTION 62.022." and substitute "Section 62.022. ADJUSTMENT OF ALLOCATION FORMULA.".

(2) On page 7, line 26, strike "of this Section" and substitute ", Section 62.021, of this code".

Committee Amendment No. 3 - Delco

Amend **S.B. 578** by striking the third sentence of Subsection (a), Section 62.021, on page 2, lines 21-24 and substituting the following:

The Comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of any goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes.

Floor Amendment No. 4$- Jackson

Amend **S.B. 578** as follows:

(1) On page 4, strike lines 19-22 and substitute the following:

such funds may not be expended without the prior approval of the legislature or the approval, review, or endorsement (as applicable) of the Coordinating Board, Texas College and University System, as provided by Section 61.058 of this code.

(2) On page 6, between lines 2 and 3, insert a new Section 2 to read as follows and renumber current Section 2 as Section 3:

SECTION 2. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.075 to read as follows:

Sec. 61.075. POWERS UNAFFECTED BY CERTAIN CONSTITUTIONAL AMENDMENT. The powers of the board and the legislature, including the powers granted under Section 61.058 of this code, are not limited by the constitutional amendments proposed by **H.J.R. 19**, 68th Legislature, Regular Session, 1983, and adopted by the voters except to the extent those powers are specifically limited by those constitutional provisions.

The amendments were read.

Senator Parker moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 578** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chairman; Barrientos, Jones, Sharp and Truan.

(Senator Parker in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1028, Relating to the selection of delegates to national presidential nominating conventions, to primary elections, and to party conventions. (Amended).

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 1028 WITH HOUSE AMENDMENT

Senator Edwards called **S.B. 1028** from the President's table for consideration of the House amendment to the bill.

Senator Edwards moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

Senator Krier made a parliamentary inquiry as to whether the House amendments had been printed and placed on the Members' desks.

The Presiding Officer (Senator Parker in Chair) stated the House amendments had not been printed.

Senator Edwards moved to suspend Senate Rule 74a.

(President in Chair)

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Barrientos, Brooks, Caperton, Edwards, Farabee, Glasgow, Howard, Jones, Kothmann, Lyon, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brown, Harris, Henderson, Krier, Leedom, McFarland, Sims.

The President laid before the Senate the following House amendments to **S.B. 1028**.

Committee Amendment No. 1 - Russell

Substitute the following for **S.B. 1028**:

A BILL TO BE ENTITLED

AN ACT

relating to the selection of delegates to national presidential nominating conventions, to primary elections, and to party conventions; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Texas Election Code is amended by adding Section 235a to read as follows:

235a. PRESIDENTIAL PRIMARY

Subdiv. 1. "PRESIDENTIAL PRIMARY" DEFINED. In this code, "presidential primary" means an election held under this section at which a political party's voters are given an opportunity to express their preferences for the party's presidential candidates, or for an "uncommitted" status if provided by party rule, for the purpose of determining the allocation of the party's delegates from this state to the party's national presidential nominating convention.

Subdiv. 2. PARTIES REQUIRED TO HOLD PRESIDENTIAL PRIMARY. To be entitled to have its nominees for president and vice-president of the United States placed on the general election ballot in a particular presidential election year, a political party must hold a presidential primary in this state if:

(1) in the presidential election year, the party is required by this code to nominate its candidates for state and county offices by primary election;

(2) a presidential primary is authorized under national party rules; and

(3) before January 1 of the presidential election year, the party has determined that it will hold a national presidential nominating convention that year.

Subdiv. 3. DATE OF PRESIDENTIAL PRIMARY. The presidential primary shall be held on the second Tuesday in March of each presidential election year.

Subdiv. 4. QUALIFYING FOR PLACE ON BALLOT. (a) Candidates qualify to have their names placed on the presidential primary ballot in the manner provided by party rule, subject to this subdivision.

(b) If party rules provide for the filing of applications or signature petitions to qualify candidates for a place on the ballot, the filing deadline may not be later than the 65th day before presidential primary election day. A signature on a candidate's petition is not valid unless it is that of a registered voter and is accompanied by the signer's residence address, including county, and voter registration number.

(c) A person may not sign petitions supporting more than one presidential candidate in the same primary, and, if a person does so, the person's signature is void as to all petitions he signs.

Subdiv. 5. NOTICE OF CANDIDATES TO SECRETARY OF STATE. The state chairman of each political party holding a presidential primary shall certify the name of each presidential candidate who qualifies for a place on the presidential primary ballot and deliver the certification to the secretary of state not later than the 60th day before presidential primary election day.

Subdiv. 6. PRESIDENTIAL PRIMARY BALLOT. (a) The presidential primary ballot shall contain the heading "Preference for Presidential Nominee for the _____ Party" followed by the instruction note, "You may vote for one presidential candidate whose name appears on the ballot by placing an 'X' in the square beside the candidate's name." If party rules provide for voting for an uncommitted status, the instruction note shall read, "You may vote for one presidential candidate whose name appears on the ballot by placing an 'X' in the square beside the candidate's name or you may vote as uncommitted by placing an 'X' in the square beside 'Uncommitted.' Make only one choice."

(b) The party's county executive committee shall conduct a drawing to determine the order in which the presidential candidates' names are printed on the ballot in the county. "Uncommitted" shall be printed on the ballot following the candidates' names, if applicable.

Subdiv. 7. PROCEDURES FOR CONDUCT OF PRESIDENTIAL PRIMARY GENERALLY. (a) Except as otherwise provided by this section, the presidential primary shall be conducted and the results canvassed and reported in accordance with the procedures prescribed by this code for conducting the general primary election to the extent those procedures can be made applicable.

(b) The secretary of state shall prescribe by rule any additional procedures necessary for the orderly and proper conduct of the presidential primary.

Subdiv. 8. FINANCING PRESIDENTIAL PRIMARY. (a) Subject to legislative appropriation, state funds may be spent to pay expenses incurred by the secretary of state or by a political party in connection with a presidential primary.

(b) The provisions of this code relating to state financing of a general primary govern a presidential primary to the extent those provisions can be made applicable.

(c) The secretary of state shall adopt rules, consistent with this section, that are necessary for the fair and efficient financing of presidential primaries with state funds.

Subdiv. 9. ALLOCATION OF DELEGATES. Each political party holding a presidential primary shall adopt a rule for allocating delegates based on the results of the presidential primary. At least 75 percent of the total number of delegates who

are to represent this state at the party's national presidential nominating convention, excluding delegates allocated among party and elected officials, shall be allocated in accordance with the rule among one or more of the candidates whose names appear on the presidential primary ballot and, if applicable, the uncommitted status.

Subdiv. 10. IMPLEMENTATION BY PARTY. (a) The state executive committee of each political party holding a presidential primary shall adopt the rules necessary to implement this section.

(b) The rules may not be inconsistent with this section or with rules adopted by the secretary of state under this section.

(c) The rules are enforceable by mandamus to the same extent as statutes.

(d) For a political party to be entitled to have its nominees for president and vice-president of the United States placed on the general election ballot in an election year in which the party is holding a presidential primary, the rules adopted under this subdivision must be filed with the secretary of state not later than January 5 of the presidential election year. The secretary of state may extend this deadline for good cause.

(e) The rules may be amended at any time by the state executive committee, but an amendment adopted in a presidential election year after the rules are filed with the secretary of state under Paragraph (d) of this subdivision may not take effect until after the presidential election year if the rule affects the selection of delegates to the national presidential nominating convention.

SECTION 2. Subdivisions 1 and 3, Section 170b, Texas Election Code (Article 11.01b, Vernon's Texas Election Code), are amended to read as follows:

Subdiv. 1. Any person eligible to hold the office of President of the United States may have his name and the name of a vice-presidential running mate printed on the ballot as independent candidates in the presidential race by complying with the provisions of this section. A voter or candidate in a presidential primary is ineligible to be an independent candidate for president or vice-president of the United States in the succeeding general election.

Subdiv. 3. A petition may not be circulated for signatures until after the date of the presidential [~~general~~] primary [~~election~~] in that election year, and any signature obtained on or before that date is void. A voter who voted in [~~the general primary of any political party that held~~] a presidential primary that year is ineligible to sign the petition of an independent candidate for president. The following statement shall appear at the head of each page of a petition: "I certify that I did not vote this year in [~~the general primary election of any political party that held~~] a presidential primary."

SECTION 3. Section 179, Texas Election Code (Article 13.01, Vernon's Texas Election Code), is amended to read as follows:

179. PRIMARY ELECTION. The term "primary election," as used in this chapter, means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party, and unless the context indicates otherwise, the term includes a presidential primary.

SECTION 4. Subdivisions (1), (2), (4), (5), and (7), Section 179a, Texas Election Code (Article 13.01a, Vernon's Texas Election Code), are amended to read as follows:

(1) The members of an organized political party who shall be permitted to participate in its convention procedure as set forth in this code shall be only those persons who have become qualified as members of the party by voting in the elections of the party or have otherwise qualified as provided in this section. Having once become a qualified member of a party, a person shall remain a qualified member of that party for the duration of that calendar [~~voting~~] year.

(2) The election and convention procedure of the party shall include the general primary election and the second primary election provided for in Section 181 of this code (Article 13.03, Vernon's Texas Election Code), and a presidential primary, and shall include the conventions of the party at precinct, county and state level in both its state convention procedure and its national convention procedure insofar as they apply herein.

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear that I have not voted at a primary election or participated in a convention of any other political party during this calendar [voting] year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The first time a voter presents his voter registration certificate at a primary election, the election officer shall stamp the appropriate party designation within the party affiliation space on the face of the certificate. If the voter is voting on a statement of a lost registration certificate, the presiding judge shall issue to him a certificate of his having voted, in the following form:

Date _____

_____ has voted on this date in the
(Name of Voter)

primary election of the _____ Party.

_____

Presiding Judge, Precinct No. _____,

_____ County, Texas.

When a voter votes by absentee ballot in a primary election, the county clerk shall stamp the appropriate party designation on the voter's registration certificate; or if the voter is voting on a statement of a lost or unreturned certificate, the clerk shall deliver or mail to the voter, at the time specified by law for returning a registration certificate to an absentee voter, a certificate of his having voted by absentee ballot in the primary.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall present to the precinct chairman his affidavit that he has not participated in the primary or convention of any other party during that calendar [voting] year. Thereupon, the precinct chairman shall stamp the appropriate party designation on the voter's registration certificate if the voter presents it, and if the registration certificate is not presented, the chairman shall issue to the voter a certificate in the following form:

Date _____

_____ has affiliated with the
(Name of Voter)

_____ Party for the current year.

_____

Precinct Chairman, Precinct No.___,

_____

County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he receives it. The county clerk shall keep the affidavits

on file in alphabetical order within each precinct for a period of two years after the end of the calendar [~~voting~~] year in which they are filed. The county clerk shall maintain a separate file for each political party.

(7) No person who participates in the primary or convention of any political party during a calendar [~~voting~~] year shall participate in any subsequent primary or convention of any other party during that same calendar [~~voting~~] year. Any vote cast in a primary election in violation of this prohibition shall be void and shall not be counted for any purpose[~~, and the violator shall be punishable as provided in Article 240 of the Texas Penal Code~~].

SECTION 5. Section 186(d), Texas Election Code (Article 13.08, Vernon's Texas Election Code), is amended to read as follows:

(d) In lieu of the payment of a filing fee, a candidate may file a nominating petition which may be in multiple parts and must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide office, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the number of votes cast in the territory for that party's candidate for governor in the last preceding gubernatorial general election. However, in no event shall the number required be more than 500; and if two percent of the votes cast in the territory was less than 25, the number required is the lesser of 25 signatures or 10 percent of the number of votes cast.

Where a candidate is running in a district, county, or precinct which has been created or the boundaries of which have been changed since the last gubernatorial general election, he may request that the secretary of state in the case of a district or county office, or the county clerk of the county in which the precinct is situated in the case of a precinct office, make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last gubernatorial election. Not later than the 15th day after receiving such a request, the officer shall make the estimate and notify the candidate, and also the officer with whom the candidate files his application. The estimate shall be used as the official basis for computing the number of signatures required on a petition. If an advance estimate is not requested, the officer with whom the petition is filed shall make the estimate, whenever necessary, before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court having jurisdiction in the territory involved.

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the (fill in name) Party for the office for which (fill in name) is a candidate. I have not signed the petition of a candidate who is running for any office in the primary of any other party. I understand that by signing this petition I become ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party, including a party which is not holding a primary election, during the calendar [~~voting~~] year in which this election is held, and that I am guilty of a misdemeanor if I attempt to do so."

To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

The petition must show the following information with respect to each signer: His address (including his street address if residing in a city, and his rural route address if not residing in a city), his current voter registration certificate number (also showing the county of issuance if the office includes more than one county), and the date of signing. The secretary of state shall prescribe a form for the petition before the 30th day prior to the filing deadline and provide copies of that form to the state chairman and the county chairmen of each party holding a primary election. However, a candidate may use any other form which complies with the requirements of this section. It is the specific intent of the legislature that there shall be no requirement for the administering of an oath to any person signing a petition under the provisions of this section.

A petition filed under this section shall be filed with the same officer with whom an application for a place on the ballot for the office being sought is to be filed and must be filed at the same time as such an application.

SECTION 6. Paragraphs (a), (b), and (c), Subdivision 2, Section 222, Texas Election Code (Article 13.45, Vernon's Texas Election Code), are amended to read as follows:

(a) Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election for that office, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election for that office, may nominate candidates by conventions as provided in Sections 224 and 225 of this code (Articles 13.47 and 13.48, Vernon's Texas Election Code), but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 30 days after the date for holding the party's state convention, the lists of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code (Articles 13.45a and 13.47, Vernon's Texas Election Code), signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election for that office; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election for that office. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that calendar [~~voting~~] year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition.

(b) The following statement shall appear at the head of each page of the petition: "I know the contents of this petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current calendar [~~voting~~] year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this calendar [~~voting~~] year." The petition may be in multiple parts. To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and

belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters. The petition may not be circulated for signatures until after the date of the party's precinct conventions. Any signatures obtained on or before that date are void.

(c) Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same calendar [~~voting~~] year, or any person who votes in a primary election or participates in a convention of any other party during the same calendar [~~voting~~] year after having signed the petition, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 nor more than $500.

SECTION 7. Section 349, Texas Election Code (Article 15.49, Vernon's Texas Election Code), is amended to read as follows:

349. PARTICIPATING IN PRIMARY ELECTIONS OR CONVENTIONS OF MORE THAN ONE PARTY. Whoever votes or offers to vote at [~~either~~] a [~~general~~] primary election [~~or a runoff primary election~~] or participates or offers to participate in a convention of a political party, having voted at [~~either~~] a [~~general~~] primary election [~~or a runoff primary election~~] or participated in a convention of any other party during the same calendar [~~voting~~] year, shall be guilty of a Class A misdemeanor.

SECTION 8. Section 181, Texas Election Code (Article 13.03, Vernon's Texas Election Code), is amended to read as follows:

181. DATE OF PRIMARY. The first Saturday in May in each gubernational election year and the second Tuesday in March in each presidential election year [~~of 1960, and every two (2) years thereafter~~] shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any office under this section [~~Article~~], a second primary election shall be held by such political party on the first Saturday in June in each gubernatorial election year and the second Tuesday in April in each presidential election year succeeding such general primary election, and only the names [~~name~~] of the two (2) candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary, except as herein stated, provided that in case no one received a majority in the first primary and if the second and third highest candidates in that race shall be tied these two (2) shall cast lots under the direction of the county chairman or state chairman as the case may be to see which of the two (2) shall have his name printed on the second primary ballots. The second primary election shall be conducted according to the law prescribed for conducting the general primary election and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations, except where provided for by law. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than thirty (30) days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county

primary elections shall apply to them. The provisions of this code relating to general and runoff primary elections apply to those elections held in gubernatorial election years and, to the extent practicable, to those elections held in presidential election years. The secretary of state shall prescribe rules modifying those provisions as necessary to implement the conduct of those elections in presidential election years and, to the extent practicable, the filing deadlines, dates of meetings and other events, and other dates and time schemes relating to the primaries shall provide the same interval to the elections as provided for those elections held in gubernatorial election years, except that the regular filing deadline for candidates' applications for a place on the general primary ballot may not be earlier than January 2 immediately preceding the election.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Schlueter

Amend **C.S.S.B. 1028** as follows:

(1) On page 15, lines 17-19, strike "first Saturday in May in each gubernatorial election year and the second Tuesday in March in each presidential election year[" and substitute "second Tuesday in March in each even-numbered year [~~first Saturday in May~~]".

(2) On page 16, lines 3-5, strike "first Saturday in June in each gubernatorial election year and the second Tuesday in April in each presidential election year" and substitute "second Tuesday in April [~~first Saturday in June~~]".

(3) On page 17, beginning with "The" on line 4, strike the remainder of the section and substitute the following:

The secretary of state shall prescribe rules modifying the provisions of this code relating to general and runoff primary elections as necessary to implement the conduct of those elections on the dates prescribed by this section and shall prescribe any necessary rules modifying provisions relating to candidacy in the general election for state and county officers. To the extent practicable, the filing deadlines, dates of meetings and other events, and other dates and time schemes relating to the elections shall provide the same interval to the elections as provided for those elections under the prior law, except that the regular filing deadline for candidates' applications for a place on the general primary ballot may not be earlier than January 2 immediately preceding the election. The secretary of state shall consult the political parties required to make nominations by primary election before prescribing the rules required under this section.

(4) On page 17, strike Section 9 and substitute new Sections 9, 10, and 11 to read as follows:

SECTION 9. Section 9b(a), Texas Election Code (Article 2.01b, Vernon's Texas Election Code), is amended to read as follows:

(a) Except as provided in Subsections (b) and (e) of this section, every general (regular) or special election held by the state or by any county, city, school district, water district, or any other political subdivision or agency of this state must be held on one of the following dates: the third Saturday in January, the first Saturday in May [~~April~~], the second Saturday in August, or the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be submitted to the voters in an election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city or town wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered

voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a population of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and amendments to the constitution of this state submitted to the voters by the legislature. This requirement does not apply to runoff elections, political subdivisions using the convention method of election, local option elections held under the Alcoholic Beverage Code, elections for bonds and elections for school maintenance taxes, to the biennial party primary elections held to nominate candidates for public office, or to confirmation elections, director elections, and maintenance tax elections, held in conjunction with the creation of political subdivisions provided for by Article XVI, Section 59, of the Texas Constitution, which furnish water or sewer services to household users. An election held on an unauthorized date is void.

SECTION 10. (a) This Act takes effect only if the secretary of state determines that the United States Department of Justice has indicated on or before November 15, 1985, that no objection will be interposed under the federal Voting Rights Act (42 U.S.C. Sections 1971, 1973 et seq.) to this Act and, if that determination is not made, this Act has no effect. The secretary of state shall publish in the Texas Register any determination made under this subsection.

(b) As soon as possible after enactment of this Act, the secretary of state, in anticipation of the approval under the Voting Rights Act of this Act and **S.B. 616**, Acts of the 69th Legislature, Regular Session, 1985 (adopting the Election Code), shall prescribe proposed rules necessary for implementing this Act, which rules shall be contingent on the approval of this Act. The proposed rules shall provide for alternatives as necessary to take into consideration the effect of approval or disapproval of **S.B. 616** under under the Voting Rights Act. The secretary shall submit the proposed rules as soon as possible to the Unites States Department of Justice under the Voting Rights Act. The secretary shall modify the rules as necessary or appropriate in response to action under the Voting Rights Act.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 2 - Schlueter

Amend **S.B. 1028** as follows:

In Section 1 of the bill, strike Subdivision 9 of Section 235a and substitute a new Subdivision 9 to read as follows:

Subdiv. 9. ALLOCATION OF DELEGATES. (a) The number of delegates who are to represent this state at a political party's national presidential nominating convention shall be allocated among the preferences for candidates and the uncommitted status, if applicable, expressed by the voters in the presidential primary as provided by this subdivision. Alternates shall be allocated in the manner applicable to delegates.

(b) District-level delegates shall be allocated among the preferences in the same proportion, without the use of fractional delegates, as the number of votes received in the district by each preference bears to the total presidential preference vote received in the district.

(c) At-large delegates shall be allocated among the preferences in the same proportion, without the use of fractional delegates, as the number of votes received statewide by each preference bears to the total presidential preference vote received statewide.

(d) The allocation of delegates is subject to party rules providing for:

(1) a requirement of a threshold of voter support for entitlement to delegates; or

(2) allocation of delegates among party and elected officials.

The amendments were read.

Senator Edwards again moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1028** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Edwards, Chairman; Caperton, Howard, Mauzy, Farabee.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 979, Relating to the deliberations of governmental bodies. (As substituted)

S.B. 994, Relating to appropriations to the Texas Department of Mental Health and Mental Retardation and transfers of funds to improve staff-to-client ratios in state mental hospitals and state schools for the retarded.

S.B. 1301, Relating to the conveyance of certain state-owned real property in Travis County by the Texas Employment Commission and disposition of the proceeds.

S.B. 1175, Relating to procedures to establish and enforce payment of child support, to the conservatorship and possession of and access to children, and to the recognition and enforcement of orders from other jurisdictions. (Amended)

S.B. 548, Relating to the use of funds appropriated to the Texas Department of Corrections for the construction and completion of certain building projects.

S.B. 1273, Making appropriations for and directing payment of certain miscellaneous claims and judgments out of funds designated herein; requiring approval of the claims in the manner specified in this Act before payment is made. (Amended)

S.B. 141, Relating to student union fees at North Texas State University.

S.B. 926, Relating to certain information provided by state agencies to the governor's office on equal employment opportunity.

S.B. 831, Relating to issuance of a marriage license and to remarriage after divorce.

S.B. 652, Relating to the offense of public intoxication and alternatives to arrest; providing immunity from liability to peace officers and their employees.

S.B. 688, Relating to election precincts in certain counties.

S.B. 466, Relating to bailiffs and a grand jury bailiff of the 297th District Court.

S.B. 1081, Relating to the regulation by municipalities of certain private for-hire vehicles, however propelled, providing passenger taxicab transportation services; authorizing the regulation by municipalities of such services.

S.B. 738, Relating to the effect of students' absence from examinations, work assignments, or other work projects at institutions of higher education due to observance of a religious holy day. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

ADMINISTRATION COMMITTEE GRANTED PERMISSION TO MEET

On motion of Senator Blake and by unanimous consent, the Administration Committee was granted permission to meet while the Senate was in session.

JURISPRUDENCE COMMITTEE GRANTED PERMISSION TO MEET

On motion of Senator Mauzy and by unanimous consent, the Jurisprudence Committee was granted permission to meet while the Senate was in session.

SENATE RULE 103 SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider the following resolutions:

H.C.R. 191
H.C.R. 192
H.C.R. 204
H.C.R. 205
H.C.R. 206
H.C.R. 213

(Senator Barrientos in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 399, Relating to the determination of death by a physician after consultation with a registered nurse. (Amended)

S.B. 162, Authorizing certain bank drive-in/walk-up facilities. (Amended)

S.B. 782, Relating to the regulation, management, and operation of banks and supervision of bank holding companies. (Amended)

S.B. 1294, Relating to the definition of "interdisciplinary team" and the duties of the Public Responsibility Committee with respect to the team.

S.B. 1167, Relating to the forfeiture and award of good conduct time by the director of the Texas Department of Corrections and to eligibility for trusty.

S.B. 300, Relating to the operation, administration, and continuation of the Texas Advisory Board of Occupational Therapy and the licensing of occupational therapists and occupational therapy assistants. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

STATE AFFAIRS COMMITTEE GRANTED PERMISSION TO MEET

On motion of Senator Farabee and by unanimous consent, the State Affairs Committee was granted permission to meet while the Senate was in session.

SENATE RULE 103 SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider **H.B. 215** today.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.J.R. 58, Proposing a constitutional amendment to authorize broadened investment authority for certain veteran and university funds.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 192 WITH HOUSE AMENDMENTS

The Senate resumed consideration of House amendments to **S.B. 192**.

Question - Shall the Senate concur in the House amendments?

On motion of Senator Sharp and by unanimous consent, the motion to concur was withdrawn.

Senator Sharp moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 192** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sharp, Chairman; Washington, Glasgow, Caperton, Farabee.

SENATE RULE 74a SUSPENDED

On motion of Senator Jones and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendment to **S.B. 1342.**

SENATE BILL 1342 WITH HOUSE AMENDMENT

Senator Jones called **S.B. 1342** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - Uher

Strike Section 1 and add the following language:

Section 1. Section 52.17, Education Code, is amended by adding Subsection (e) to read as follows:

"(e) Amounts paid to the board by the federal lender's special allowance program may be deposited in the interest and sinking fund, used for the administration of student loan and grant programs, or other programs administered by the board as specified by the Legislature in the General Appropriations Act."

The amendment was read.

Senator Jones moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1342** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jones, Chairman; Howard, Caperton, Harris, McFarland.

SENATE RULE 74a SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 283.**

SENATE BILL 283 WITH HOUSE AMENDMENTS

Senator Glasgow called **S.B. 283** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Millsap

Amend **S.B. 283** by striking line 19 on page 4 and inserting the following:

"against any licensed chiropractor in this"

Floor Amendment No. 2 - Wallace

Amend **S.B. 283** at page 2 line 8, by inserting the following between the words "members." and "The":

The term of each member shall be two years and no member shall be eligible to serve more than two terms.

Floor Amendment No. 3 - Wallace

Amend **S.B. 283** at page 2, line 10, in SECTION 2, by substituting subsection (c) with the following:

(c) Any chiropractor who has completed a program of peer review training approved by the Board is eligible to serve on a chiropractic peer review committee and shall be considered a member of the local peer review committee if he so desires.

Floor Amendment No. 4 - Wallace

Amend **S.B. 283** on page 3, line 8, by deleting item (c) and substituting the following:

(c) Any chiropractor who has completed a program of peer review training approved by the Board is eligible to serve on a chiropractic peer review committee and shall be considered a member of the local peer review committee if he so desires.

The amendments were read.

Senator Glasgow moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 283** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Parmer, Uribe, Sharp, Harris.

SENATE RULE 103 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Criminal Justice might consider the following bills Sunday, May 26, 1985 at 9:30 a.m.

H.B. 1544
H.B. 1929

HOUSE RESOLUTION ON FIRST READING

The following resolution received from the House was read the first time and referred to the Committee indicated:

H.J.R. 58, To Committee on State Affairs.

SENATE RULE 74a SUSPENDED

On motion of Senator Uribe and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 738**.

SENATE BILL 738 WITH HOUSE AMENDMENT

Senator Uribe called **S.B. 738** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - P. Hill

Substitute the following for **S.B. 738**:

A BILL TO BE ENTITLED
AN ACT

relating to students at an institution of higher education who are absent from classes on a religious holy day.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 51, Education Code, is amended by adding Section 51.911 to read as follows:

Sec. 51.911. RELIGIOUS HOLY DAYS. (a) An institution of higher education shall allow a student who is absent from classes for the observance of a religious holy day to take an examination or complete an assignment scheduled for that day within a reasonable time after the absence if, not later than the 15th day after the first day of the semester, the student notified the instructor of each class the student had scheduled on that date that the student would be absent for a religious holy day.

The notification provided hereby shall be in writing and shall e personally delivered by the student to the instructor of each class, receipt therefor being acknowledged and dated by the instructor, or by certified mail, return receipt requested, addressed to the instructor of each class.

(b) For purposes of this section, "institution of higher education" has the meaning assigned to that term by Section 61.003(7) of this code, except that the term includes the Southwest Collegiate Institute for the Deaf and Texas State Technical Institute.

(c) In this section, "religious holy day" means a holy day observed by a religion whose places of worship are exempt from property taxation under Section 11.20, Property Tax Code.

The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to e read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Uribe moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 738** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Uribe, Chairman; Mauzy, Truan, Washington, Parker.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Mauzy submitted the following report for the Committee on Jurisprudence:

S.B. 1496
H.C.R. 192
H.C.R. 213
H.C.R. 206
H.C.R. 204
H.C.R. 191
H.C.R. 205
H.C.R. 207

CONFERENCE COMMITTEE REPORT
HOUSE BILL 20

Senator Jones submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 20** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

JONES	RUDD
HOWARD	HOLLOWELL
CAPERTON	McWILLIAMS
TRAEGER	TOOMEY
FARABEE	MADLA
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Farabee submitted the following report for the Committee on State Affairs:

C.S.H.B. 912
H.B. 2520
H.B. 2096
H.B. 2420
H.B. 2516
H.B. 1555
H.B. 903

CONFERENCE COMMITTEE REPORT
SENATE BILL 713

Senator Jones submitted the following Conference Committee Report:

Austin, Texas
May 25, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 713** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

JONES	RUDD
TRAEGER	DENTON
LEEDOM	UHER
HOWARD	HALEY
SHARP	SAUNDERS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the Employees Retirement System of Texas and the Teacher Retirement System of Texas; to contributions to the systems and for the optional retirement program; to actions increasing the amortization period; and to increases in certain

annuities; amending Title 110B, Revised Statutes, by amending Section 36.201 and Subsection (a) of Section 25.403; by conditionally amending Subsection (a) of Section 35.403, Subsection (a) of Section 35.404, and Section 35.402; and by adding Sections 21.006 and 31.006.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 25.403, Title 110B, Revised Statutes, is amended to read as follows:

"(a) During each fiscal year, the state shall contribute to the retirement system:

"(1) an amount equal to 7.4 [~~eight~~] percent of the total compensation of all members of the retirement system for that year;

"(2) money to pay lump-sum death benefits for retirees under Section 24.501 of this subtitle;

"(3) money necessary for the administration and payment of benefits from the law enforcement and custodial officer supplemental retirement fund; and

"(4) money for service credit not previously established, as provided by Section 23.202(e) or 23.302(d) of this subtitle."

SECTION 2. Contingent on **S.B. 387**, 69th Legislature, Regular Session, 1985, becoming law, Section 35.402, Title 110B, Revised Statutes, is amended to read as follows:

"Section 35.402. RATE OF MEMBER CONTRIBUTIONS. The rate of contributions for each member of the retirement system is:

"(1) five percent of the member's annual compensation or $180, whichever is less, for service rendered after August 31, 1937, and before September 1, 1957;

"(2) six percent of the first $8,400 of the member's annual compensation for service rendered after August 31, 1957, and before September 1, 1969;

"(3) six percent of the member's annual compensation for service rendered after August 31, 1969, and before the first day of the 1977-78 school year; [~~and~~]

"(4) 6.65 percent of the member's annual compensation for service rendered after the last day of the period described by Subdivision (3) of this section and before September 1, 1985; and

"(5) 6.4 percent of the member's annual compensation for service rendered after August 31, 1985."

SECTION 3. Contingent on **S.B. 387**, 69th Legislature, Regular Session, 1985, becoming law, Subsection (a), Section 35.403, Title 110B, Revised Statutes, is amended to read as follows:

"(a) Each payroll period, each employer shall deduct from the compensation of each member employed by the employer an amount equal to 6.4 [~~6.65~~] percent of the member's compensation for that period."

SECTION 4. Contingent on **S.B. 387**, 69th Legislature, Regular Session, 1985, becoming law, Subsection (a), Section 35.404, Title 110B, Revised Statutes, is amended to read as follows:

"(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to eight [~~8-1/2~~] percent of the aggregate annual compensation of all members of the retirement system during that fiscal year."

SECTION 5. Section 36.201, Title 110B, Revised Statutes, is amended to read as follows:

"Section 36.201. CONTRIBUTIONS. (a) Each fiscal year the state shall contribute to the optional retirement program an amount equal to 8-1/2 percent of the aggregate annual compensation of all participants in the program during that

year. A [~~and a~~] participant in the optional retirement program shall contribute [pay] to the program 6.65 percent of the person's annual compensation [~~the same amounts as each would have been required to contribute to the retirement system had the person remained a member~~].

"(b) Contributions required by this section [~~These payments~~] shall be credited to the benefit of the participant.

"(c) In this section, 'annual compensation' has the meaning assigned to that term by Section 31.001(4) of this subtitle."

SECTION 6. Subchapter A, Chapter 21, Title 110B, Revised Statutes, is amended by adding Section 21.006 to read as follows:

"Section 21.006. ACTION INCREASING AMORTIZATION PERIOD. (a) A rate of member or state contributions to or a rate of interest required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

"(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) of this section is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation."

SECTION 7. Subchapter A, Chapter 31, Title 110B, Revised Statutes, is amended by adding Section 31.006 to read as follows:

"Section 31.006. ACTION INCREASING AMORTIZATION PERIOD. (a) A rate of member or state contributions to or a rate of interest or the rate of a fee required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

"(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) of this section is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an acutarial valuation."

SECTION 8. (a) Annuities that are described by Subsection (a), Section 24.601, Title 110B, Revised Statutes, and that are based on retirements or deaths occurring before September 1, 1983, are increased by five percent, beginning with payments of the annuities that become due on or after the effective date of this Act.

(b) The board of trustees of the Employees Retirement System of Texas shall pay the annuities as increased by this Act from the retirement annuity reserve fund and may transfer to that fund from the state accumulation fund any portion of the amount actuarially determined to be necessary to finance the increase in benefits provided by this Act for the duration of the annuities to which the increase applies that exceeds the amount in the retirement annuity reserve fund available to finance the increase.

SECTION 9. If **S.B. 880** or **H.B. 1641**, 69th Legislature, Regular Session, 1985, becomes law, the provisions of this Act prevail over the provisions of the laws included in either of those Acts to the extent of any conflict, regardless of their relative dates of enactment.

SECTION 10. This Act takes effect September 1, 1985.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MEMORIAL RESOLUTIONS

S.R. 522 - By Montford: Memorial resolution for Lawrence Aberegg.

S.R. 523 - By Montford: Memorial resolution for Mollie Beth Newberry.

S.R. 535 - By Glasgow: Memorial resolution for Mrs. Charlene Fletcher.

S.R. 536 - By Glasgow: Memorial resolution for John H. Webb.

CONGRATULATORY RESOLUTIONS

S.R. 524 - By Mauzy: Extending congratulations to Roosevelt High School Boys' Track Team.

S.R. 526 - By Sharp: Expressing appreciation to Lavinia Griffith for donation of park land.

S.R. 527 - By Edwards: Extending congratulations to Central Freight Lines on 60th anniversary.

S.R. 528 - By Barrientos: Extending congratulations to Bill Whitehurst, State Bar President.

S.R. 529 - By Barrientos: Extending congratulations to Mrs. Ollie Phillips Singleton on 90th birthday.

S.R. 530 - By Sims: Extending congratulations to Mrs. Jean Faulkenberry.

S.R. 531 - By Sims: Extending congratulations to Maud S. Saenger.

S.R. 532 - By Glasgow: Extending congratulations to Howard Sargent.

S.R. 533 - By Glasgow: Extending congratulations to Members of Lakeside City Council.

S.R. 534 - By Glasgow: Extending congratulations to Mark Rash.

ADJOURNMENT

On motion of Senator Mauzy, the Senate at 7:11 o'clock p.m. adjourned until 10:00 o'clock a.m. tomorrow.

APPENDIX

Signed by Governor
(May 24, 1985)

S.B. 104 (Effective January 1, 1986)
S.B. 427 (Effective September 1, 1985)
S.B. 559 (Effective immediately)
S.B. 1084 (Effective September 1, 1985)
S.C.R. 47
S.C.R. 64
S.B. 39 (Effective immediately)

S.B. 164 (Effective August 26, 1985)
S.B. 420 (Effective September 1, 1985)
S.B. 488 (Effective immediately)
S.B. 502 (Effective September 1, 1985)
S.B. 515 (Effective September 1, 1985)
S.B. 599 (Effective immediately)
S.B. 771 (Effective immediately)
S.B. 1004 (Effective immediately)
S.B. 1075 (Effective immediately)
S.B. 1127 (Effective immediately)
S.B. 1265 (Effective August 26, 1985)
S.B. 1275 (Effective August 26, 1985)
S.B. 1293 (Effective September 1, 1985)
S.B. 1315 (Effective immediately)
S.B. 1327 (Effective immediately)
S.B. 150 (Effective August 26, 1985)
S.B. 449 (Effective August 26, 1985)
S.B. 526 (Effective August 26, 1985)
S.B. 655 (Effective immediately)
H.B. 160 (Effective January 1, 1986)
H.B. 353 (Effective August 26, 1985)
H.B. 653 (Effective immediately)
H.B. 731 (Effective September 1, 1985)
H.B. 809 (Effective September 1, 1985)
H.B. 1085 (Effective immediately)
H.B. 1086 (Effective immediately)
H.B. 1087 (Effective immediately)
H.B. 1088 (Effective immediately)
H.B. 1089 (Effective immediately)
H.B. 1090 (Effective immediately)
H.B. 1091 (Effective immediately)
H.B. 1092 (Effective immediately)
H.B. 1093 (Effective immediately)
H.B. 1110 (Effective immediately)
H.B. 1112 (Effective January 1, 1986)
H.B. 1949 (Effective October 1, 1985)
H.B. 2119 (Effective September 1, 1985)
S.B. 76 (Effective September 1, 1985)
S.B. 228 (Effective August 26, 1985)
S.B. 265 (Effective fall semester, 1985)
S.B. 689 (Effective August 26, 1985)
S.B. 1009 (Effective August 26, 1985)
S.B. 1172 (Effective immediately)
H.B. 385 (Effective September 1, 1985)
H.B. 485 (Effective September 1, 1985)
H.B. 597 (Effective August 26, 1985)
H.B. 665 (Effective immediately)
S.B. 340 (Effective immediately)

H.B. 783 (Effective August 26, 1985)
H.B. 851 (Effective September 1, 1985)
H.B. 871 (Effective immediately)
H.B. 927 (Effective August 26, 1985)
H.B. 1059 (Effective September 1, 1985)
H.B. 1188 (Effective immediately)
H.B. 1204 (Effective immediately)
H.B. 1210 (Effective August 26, 1985)
H.B. 1393 (Effective September 1, 1985)
H.B. 1462 (Effective September 1, 1985)
H.B. 1550 (Effective August 26, 1985)
H.B. 1686 (Effective August 26, 1985)
H.B. 1779 (Effective immediately)
H.B. 1808 (Effective immediately)
H.B. 1865 (Effective August 26, 1985)
H.B. 2045 (Effective September 1, 1985)
H.B. 2048 (Effective August 26, 1985)
H.B. 2381 (Effective January 1, 1986)
H.C.R. 9
H.C.R. 79
H.C.R. 105
H.C.R. 138
H.C.R. 171
H.C.R. 185
H.C.R. 187
H.C.R. 189
H.C.R. 195
H.C.R. 196
H.C.R. 197
H.C.R. 199
H.C.R. 201
H.C.R. 202
H.C.R. 208

(May 25, 1985)

H.B. 346 (Effective September 1, 1985)
H.B. 1805 (Effective August 26, 1985)

Filed Without Signature of Governor

H.B. 794 (Effective immediately)
H.B. 1560 (Effective September 1, 1985)
H.B. 2288 (Effective August 26, 1985)
H.B. 899 (Effective August 26, 1985)
H.B. 1697 (Effective August 26, 1985)
S.C.R. 71
S.B. 295 (Effective September 1, 1985)
S.B. 517 (Effective immediately)
S.B. 1156 (Effective immediately)
S.B. 1223 (Effective immediately)
H.B. 318 (Effective August 26, 1985)